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INDEPENDENT REGULATORY
REVIEW COMMISSION

TO: Ms. Gail Weidman
Office of Long Term Living
Bureau of Policy and Strategic Planning
Bertolino Bldg., 6th Floor
1401 North 7th Street
Harrisburg, PA 17102

✓ Mr. Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

FROM: Robert Goyette, Senior Vice President of Operations 
Senior Care, Inc.

DATE: September 12, 2008

RE: Regulation No. 14-514
Chapter 2800 Assisted Living Residence Regulations

Senior Care is a privately owned senior housing/health care company dedicated to enriching the lives of the individuals who live and work with us by responding to their unique needs and universal desire for dignity and respect. Senior Care's support center is located at 9510 Ormsby Station Road, Suite 101, Louisville, Kentucky 40223. The telephone number is 502-753-6000.

Senior Care operates and manages 73 senior housing/health care facilities in 16 different states, as more particularly described in the table below:

Type of Facility	Number of Facilities	Location
Assisted Living Communities	44	Alabama (1); Arkansas (5); Florida (1); Georgia (2); Indiana (1); North Carolina (3); Ohio (6); Pennsylvania (15); South Carolina (1); Tennessee (7); Virginia (1); West Virginia (1)
Multi-Level Retirement Communities	7	California (7)

Skilled Nursing Facilities	19	Kentucky (18); Pennsylvania (1)
Inpatient Rehabilitation Hospitals	3	Kentucky (1); Ohio (1); Texas (1)
Total	73	16

In Pennsylvania, Senior Care operates and manages 15 licensed personal care homes, which all do business under the name Elmcroft. As such, Senior Care has a vested interest in the proposed Pennsylvania Assisted Living Residence regulations 2800, and we would like to take this opportunity to share our comments and concerns with the Independent Regulatory Review Commission (IRRC). We trust you will consider our comments, provided in earnest, as you deliberate fully on the impact of the new regulations governing assisted living residences in the Commonwealth.

Generally speaking, and based in part on our experience with the implementation of assisted living regulations in other states, it is our opinion that many providers in Pennsylvania will desire to have a progressive approach to convert from a personal care home to an assisted living residence. However, as providers analyze the increase in operating costs to become licensed as an assisted living residence, and realize they cannot increase costs for services in their markets, many providers will find it impossible to convert. This will likely include some of the Elmcroft communities in Pennsylvania. Other providers will find themselves in the painstakingly difficult position of converting only to pass the increased costs onto the residents. This is a lose-lose proposition for the provider and the consumer.

It is our understanding that there are specific criteria to be considered by the IRRC when determining whether a regulation is in the public interest, and we have attempted to identify the criteria in our discussion of each noted regulation below. We have attached a copy of the proposed regulations to this memo, for your convenience.

With that background, below are our specific comments and concerns regarding the proposed Assisted Living Residence regulations 2800:

1. §2800.11(c) - Procedural Requirements for Licensure or Approval of Assisted Living Residences, Relating to Licensure Fees

DISCUSSION: The proposed Assisted Living regulations provide that Assisted Living Residences must be licensed by the Department of Public Welfare of the Commonwealth, and the license application fee or renewal license fee is \$500. In addition, there is a \$105 per bed fee. By contrast, the licensing fee for a personal care home is 0-20 beds: \$15; 21-50 beds: \$20; 51-100 beds: \$30, 101 beds and over: \$50. The average number of beds of a Pennsylvania Elmcroft personal care home is 79 beds. The current licensing fee for this

average facility is \$30. Under the proposed assisted living residence regulations, the same average facility will pay a \$500 license application fee and a per bed fee of \$105 for a total of \$8,295, or a total licensing fee of \$8,795. This is an exponential increase of \$8,765. This dramatic increase in licensure fees will not only have a negative economic effect on the operator, but will negatively impact the residents as such an exorbitant increase will likely be passed on to and absorbed by the consumers. We encourage consideration of a more reasonable per bed fee, and would recommend a fee of \$25 per bed.

2. §2800.11(d) - Procedural Requirements for Licensure or Approval of Assisted Living Residence, Relating to Use of the Term “Assisted Living”

DISCUSSION: The proposed Assisted Living regulations state “No person, organization or program shall use the term ‘assisted living’ in any name or written materials, except as a licensee in accordance with this chapter.” To deny use of the term “assisted living” by a personal care home is unnecessarily restrictive and frankly this requirement is totally unreasonable. This restriction of use of the term will adversely affect the operations of personal care homes in Pennsylvania, and will confuse the consumer. As discussed below, the proposed assisted living residence regulations are duplicative in many respects of the existing personal care home regulations. Therefore, it would be impossible for a personal care home not to use the term “assisted living” because those are the services provided by personal care homes. Personal care homes in Pennsylvania use the term “assisted living” in advertising and marketing materials and community outreach and education programs. Providers have also invested considerable resources to improve relevancy on the internet via search engine optimization. Search engine optimization generally refers to making your web site achieve a higher organic ranking when being searched. The key term providers utilize is “assisted living”. Because web sites have been continually refined to include this term, a consistent ranking has been established. This makes it easier for the consumer to obtain information. As a result of the foregoing efforts, the consumer has become knowledgeable of assisted living services and associates these services with personal care homes. Failure to utilize this term would negate the vast resources already invested in marketing, undermine the impact of community outreach and education programs and confuse the consumer. Personal care home providers would need to rebrand their services and consumers would need to be re-educated to ensure they understand they will still receive the same assisted living services they have become accustomed to receiving in the many exceptional personal care homes throughout Pennsylvania despite the new “assisted living” licensure category.

In accordance with §2600.4 of the Personal Care Homes regulations, a *personal care home* is defined as “a premise in which food, shelter and personal assistance or supervision are provided for a period exceeding 24 hours, for four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision in activities of daily living or instrumental activities of daily living.” By comparison, §2800.4 of the Assisted Living Residences regulations defines an *assisted living residence* as “any premise in which

food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding 24 hours for four or more adults who are not relatives of the operator, who require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.” Personal care services under both regulations are defined identically as “assistance or supervision in ADL or IADL, or both.” The definition of the *activities of daily living* (ADLs) in the Personal Care Home regulations and the Assisted Living Residences regulations are likewise identical: “The term includes eating, drinking, ambulating, transferring in and out of a bed or chair, toileting, bladder and bowel management, personal hygiene, securing health care, managing health care, self-administering medication and proper turning and positioning in a bed or chair.” The definition of *instrumental activities of daily living* (IADLs) in the Personal Care Homes regulations “includes the following when done on behalf of a resident: (i) doing laundry, (ii) shopping, (iii) securing and using transportation, (iv) managing finances, (v) using a telephone, (vi) making and keeping appointments, (vii) caring for personal possessions, (viii) writing correspondence, (ix) engaging in social and leisure activities, (x) using a prosthetic device, (xi) obtaining and keeping clean, seasonal clothing” which are identical to the definition of IADLs as defined in the Assisted Living Residences regulations except that the Assisted Living Residences regulations include “(xi) Housekeeping.” Please note that housekeeping services are indeed provided in the personal care home setting although not defined as IADLs in the Personal Care Home regulations.

3. §2800.25 - Resident-Residence Contract

DISCUSSION: The proposed Assisted Living regulations require that the resident provide a 14 day notice to terminate the resident-residence contract. We believe this would have a negative financial impact on providers who operate more than one Pennsylvania facility. We incur expenses based on a projected census, and to allow for a 14 day notice to terminate rather than a 30 day notice would impact the efficacy of our multi-facility operations. For example, we purchase food and schedule staff in advance based on our projected census. We submit that a 30-day notice to terminate by the resident is a more reasonable approach that would allow operators to better control expenses.

4. §2800.56 - Administrator Staffing

DISCUSSION: The proposed Assisted Living regulations require that the administrator be present in the residence an average of 40 hours or more per week, in each calendar month. At least 30 hours per month shall be during normal business hours. This requirement is unreasonable during times of transition. We submit that the reasonableness of the regulation is flawed, and suggest that the Department acknowledge this requirement is difficult to be met during the inevitable times of transitioning from one administrator to another.

5. §2800.96 - First Aid Kit

DISCUSSION: The proposed Assisted Living regulations require that the residence have a first aid kit that includes an automatic electronic defibrillation device (AED). In connection with the use of AED, the American Heart Association (AHA) recommends the following:

- Persons that acquire an AED notify the local EMS office.
- A licensed physician or medical authority provides medical oversight to ensure quality control.
- Persons responsible for using the AED are trained in CPR and how to use an AED.

This requirement will definitely increase operating costs for the provider. In addition to the cost to purchase the AED, the provider will need to bear the expense of maintaining the equipment in good operating condition. There will also be expenses for the training hours involved, and the cost of a physician who will provide consulting services for the oversight to ensure quality control. As is the case when a provider experiences a dramatic increase in costs of doing business, the provider has no choice but to pass the costs onto the consumer. An AED is not required in a skilled nursing facility licensed in the Commonwealth of Pennsylvania which makes the requirement of an AED in an assisted living residence confusing and unreasonable.

6. §2800.98 - Indoor Activity Space, Relating to Common Area Square Footage

DISCUSSION: The proposed Assisted Living regulations require that the residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. There must be at least 15 square feet per living unit up to fifty living units. There must be a total of 750 square feet if there are more than 50 living units. We surmise that many existing providers will not be able to meet this requirement, and therefore will be prohibited from converting. We submit this requirement is unreasonable, and suggest that a more reasonable approach is to grandfather the square footage of existing facilities.

7. §2800.101 - Resident Living Unit

DISCUSSION: The proposed Assisted Living regulations require that for existing homes, the resident living unit must have 175 square feet, excluding bathroom and closet, and an additional 80 square feet for shared rooms. Contrast these requirements with the current personal care home regulations, which require that each single bedroom have at least 80 square feet of floor space, with an additional 60 square feet for a shared bedroom. The square footage requirement of 175 square feet for existing living units will undoubtedly exclude many providers from converting to an assisted living residence thereby affecting competition. In addition, an extreme increase in provider cost will ultimately impact the consumers and have to be passed on to and absorbed by them. We

respectfully request that the current square footage available to existing personal care home operators be grandfathered or, in the alternative, a more reasonable square footage requirement be considered, such as 150 square feet with 50 additional square feet for shared rooms.

8. §2800.101(d) - Kitchen Capacity

DISCUSSION: The proposed Assisted Living regulations require that facilities converting to assisted living residences after the effective date must provide a small refrigerator and microwave oven in each living unit. We suggest the following, and propose that clarification is needed. Our experience has shown that residents of senior housing do not utilize kitchens in their living units, including microwaves. For many, the unrestricted use of a microwave would prove an unsafe situation for the resident, and a potentially unsafe environment for the community-at-large. We suggest these items not be mandatory, and allow the residence to document that the resident has opted out of having a refrigerator or microwave in his/her living unit. In addition, we suggest the regulations be clarified to state that the requirement to provide these items does not mean the provider cannot charge for such items.

Regarding new construction, the proposed regulations require that the living units have a “kitchen,” which again increases the cost for providers and is, in many cases, an amenity that most seniors will not use. The majority of individuals who reside in senior housing have chosen this life style because they do not want to cook meals and recognize that their daily nutrition will not be compromised if the facility provides three meals a day and snacks.

Again, we urge reconsideration of the kitchen capacity requirement. We agree with the Pennsylvania Assisted Living Association (PALA) that a “country kitchen” would suffice for those residents in either existing or new construction assisted living residences. The premise that residents prefer to purchase groceries and prepare their own food in their living units, unless it is unsafe for them to do so as documented in their support plan, is flawed. We believe there is no need for this regulation, and that the market will support our position.

9. §2800.101(o) - Separate Bedroom Door

DISCUSSION: In living units with a separate bedroom, the proposed Assisted Living regulations require there must be a door to the bedroom. This fails to take into consideration efficient floor plan designs, such as an alcove design. This requirement is unreasonable and is not needed. It will result in an unwarranted increase in cost to the provider, which will ultimately be passed on to and absorbed by the consumer without the consumer receiving any substantive benefit.

10. §2800.102(c) -Bathrooms

DISCUSSION: The proposed Assisted Living regulations require there shall be at least one bathtub or shower in the bathroom of the living unit. We do not agree that a tub or shower must be in each room so long as the resident has unrestricted access to a common tub/shower room/spa. This requirement is unreasonable and is not needed. It will result in an unwarranted increase in cost to the provider, which will ultimately be passed on to and absorbed by the consumer without the consumer receiving any substantive benefit.

11. §2800.108(c) - Fire Arms and Weapons

DISCUSSION: The proposed Assisted Living regulations require that firearms, weapons and ammunition shall be permitted on the licensed premises of the residence only when the stated conditions are met. We request clarification and confirmation that notwithstanding the proposed regulation, the facility may implement a policy to ensure the safety of its residents, staff and visitors that no weapons or firearms are permitted on the premises of the facility, including the resident living units. We understand that no weapons are allowed in skilled nursing facilities in the Commonwealth, and question the need for this regulation in the Assisted Living setting.

12. §2800.131 - Fire Extinguishers

DISCUSSION: The proposed Assisted Living regulations provide there shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, living unit, including the basement and attic. The costs to implement the foregoing (i.e., purchasing, maintaining and inspecting the equipment; training on use of the equipment, etc.) would be prohibitive. This requirement is unreasonable and is not needed. It will result in an unwarranted increase in cost to the provider, which will ultimately be passed on to and absorbed by the consumer without the consumer receiving any substantive benefit. In the alternative, we suggest that the requirement be extinguishers must be located throughout the community, on every floor, every 75 feet.

13. §2800.171 - Transportation

DISCUSSION: The proposed Assisted Living regulations require a residence shall be required to provide transportation or coordinate transportation to and from medical and social appointments. Additionally, if a residence supplies its own vehicle for transporting residents to and from medical and social appointments, any vehicle used for this purpose shall be accessible to resident wheelchair users and any other assistive equipment the resident may need. The proposed regulation also requires the vehicle must have at least one first aid kit, complete with AED. We request confirmation or clarification with respect to this proposed regulation. We typically provide scheduled transportation for medical appointments two days per week to a limited service area and this charge is included in the basic rate. For unscheduled transportation to medical appointments, or for personal errands, we charge a pre-disclosed rate. We request confirmation that while the proposed regulation requires that we provide transportation, providers can indeed

charge for the provision of transportation. We do not agree that all vans should be equipped with a first aid kit that includes the AED. As stated previously, use of the AED requires specialized training and quality control and we believe that this additional operating cost will negatively financially impact providers, and therefore consumers.

14. §2800.225 - Initial and Annual Assessment

DISCUSSION: The proposed Assisted Living regulations require that a resident shall have a written initial assessment that is documented on the Department assessment form within 15 days of admission. The administrator or designee, or LPN, under the supervision of a registered nurse may complete the initial assessment. We request clarification as to the specific requirement for the “supervision of a registered nurse.” Does this imply a registered nurse on staff? Does this imply a contractual arrangement with a nurse who is available to come into the facility on an as needed basis? If a contract nurse, does it require that the nurse be available at all times by phone, and available to come into the building in the event of an emergency? A 24-hour on call arrangement with a registered nurse would be very costly to providers. In addition, locating the person or persons who are available for this type of on-call coverage would be challenging. This requirement is unreasonable and is not needed. It will result in an unwarranted increase in cost to the provider, which will ultimately be passed on to and absorbed by the consumer without the consumer receiving any substantive benefit.

15. §2800.227 - Development of the Support Plan

DISCUSSION: The proposed Assisted Living regulations provide a residence may use its own support plan for if it includes the same information as the Department’s support plan form. A licensed practical nurse, under the supervision of a registered nurse, must review and approve the support plan. As stated above, we request clarification, and ask the same questions asked in completion of the initial and annual assessment: Does “supervision of a registered nurse” imply a registered nurse on staff? Does this imply a contractual arrangement with a nurse who is available to come into the facility on an as needed basis? If a contract nurse, does it require that the nurse be available at all times by phone, and available to come into the building in the event of an emergency? For reasons stated in the prior paragraph, we submit this requirement is unreasonable. It will result in an unwarranted increase in cost to the provider, which will ultimately be passed on to and absorbed by the consumer without the consumer receiving any substantive benefit.

16. §2800.228 - Transfer and Discharge

DISCUSSION: The proposed Assisted Living regulations provide for a discharge or transfer of the resident upon a 30 day advance notice. In addition, the proposed regulations require that the notice of discharge or transfer to the resident and designated person include an explanation of the measures they can take if they disagree with the residence’s decision to transfer or discharge which shall include the name, mailing address and telephone number of the “State and the local long-term care ombudsman.”

For less than a 30 day notice to discharge or transfer, the proposed regulations require “certification by a physician or the Department” that a delay in transfer or discharge would jeopardize the health, safety and well-being of the resident or others in the residence. We respectfully submit that too often we have found that physicians are reluctant to cooperate with such a certification, and we submit this requirement is unreasonable. In any event, we request clarification that the certification by the Department or the physician can be verbal, and not written.

The proposed regulations also provide if the residence determines that a resident’s functional level has advanced or declined so that the resident’s needs cannot be met in the residence, the residence shall notify the resident, the designated person and the local ombudsman. If the resident or designated person disagrees with the residence’s decision, the residence shall contact the local ombudsman. If the residence decides to proceed, then the ombudsman will notify the Department, and the Department “may take an appropriate licensure action it deems necessary based upon the report of the ombudsman.” The residence must be permitted to maintain control of transfers and discharges of its residents. Involvement of the ombudsman as an active participant in the process is inappropriate. The ombudsman should be an advocacy resource for the resident, not their legal representative. We submit this requirement is unreasonable and there is no need for the regulation. In any event, should the proposed regulation be promulgated, we submit that there should be a time limit in which the resident and designated person shall decide if they disagree with the residence’s decision to transfer.

17. Pharmacy Services, Relating to Required Packaging Requirement

DISCUSSION: We request clarification of the proposed Assisted Living regulations with respect to the ability of the residence to limit the resident’s choice of pharmacies and to require each resident to select a pharmacy that meets the medication packaging requirements established by the facility. In the Personal Care Homes regulations, this is set forth in §2600.42 (y) which states that “A resident has the right to choose his own health care providers without limitation by the home. This includes the right to select the resident’s own pharmacist provided that the pharmacy agrees to supply medications in a way that is compatible with the home’s system for handling and assisting with the self-administration of resident medications.” We found no similar regulation in the proposed Assisted Living regulations and, in the interest of public health, safety and welfare, we encourage consideration of a regulatory requirement allowing the residence to require residents to provide medications in special packaging, such as unit-dose or multi-dose packaging. Multiple medication delivery systems have yielded undesirable results. They are time consuming, costly, and unsafe.

We must provide an efficient, effective method of medication delivery that is safe for our residents and our staff, and encourage the regulatory requirement for a consistent style of medication packaging, such as unit-dose, for all residents for whom we provide medication administration. Reducing process variation is a standard principle of continuous quality improvement thereby reducing the risk of medication errors.

**Regulatory Analysis
Form**

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency
Department of Public Welfare

(2) I.D. Number (Governor's Office Use)

14-514.

IRRC Number:

2712.

(3) Short Title

Assisted Living Residence

(4) PA Code Cite

55 Pa.Code Chapter 2800

(5) Agency Contacts & Telephone Numbers

Primary Contact: Gail Weidman 705-3705

Secondary Contact: Tom Jayson 705-3705

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed Assisted Living Residence regulation establishes the minimum standards for building, equipment, operation, care, program and services, training, staffing and for the issuance of licenses for assisted living residences operated in Pennsylvania.

(9) State the statutory authority for the regulation and any relevant state or Federal court decisions.

Public Welfare Code, Act of June 13, 1967, P.L. 31 No. 21 (62 P.S. §§ 211, 213 and 1001-1087).

Regulatory Analysis Form

(10) Is the regulation mandated by any Federal or state law or court order, or Federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. This proposed regulation is mandated by Act 2007-56 which was enacted in Pennsylvania on July 25, 2007.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Currently, there is no regulation of assisted living residences in Pennsylvania. However, assisted living residences are a significant long-term care alternative which combines housing and supportive services. They are designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice. This regulation establishes the minimum standards for licensure of assisted living residences to allow individuals to age in place. The regulation protects consumers' health and safety, privacy and autonomy while at the same time balancing providers' concerns related to liability and individual choice.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

In enacting Act 56, the General Assembly found that it is in the best interests of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need such care.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Individuals who choose to live in an assisted living residence will benefit from the proposed regulation.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effects are anticipated from the promulgation of this regulation.

(15) List the person, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Facilities that seek to operate as assisted living residences will be affected by the regulation. It is anticipated that 100 assisted living residences will be licensed in FY 2009-2010; 150 assisted living residences in FY 2010-2011; 200 assisted living residences in FY 2011-2012; and 250 assisted living residences in FY 2012-2013.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department developed the proposed regulations in consultation with the Assisted Living Residence Regulation Workgroup that was comprised of industry stakeholders, consumers and other interested parties. The Department held meetings with the workgroup on October 17, 2007, November 6, 2007, November 27, 2007, December 11, 2007, January 8, 2008, January 29, 2008, February 11, 2008, February 26, 2008 and April 1, 2008. Over thirty-five stakeholders were invited to participate in the workgroup, which included disability advocates, advocates for older adults, consumers, union representatives, an elder law attorney, public housing agencies, trade associations for profit and non-profit long-term care nursing facilities and many other interested parties. Over the course of the meetings the Department provided the workgroup with several draft versions of the proposed regulations and solicited their comments and recommendations. The proposed regulation was also discussed at the Long-Term Care Subcommittee of the Medical Assistance Advisory Committee (MAAC) on June 13, 2007, August 8, 2007 and April 9, 2008.

The Assisted Living Residence proposed regulation were also discussed at the Medical Assistance Advisory Committee (MAAC) on June 28, 2007 and at the Consumer Subcommittee of the MAAC on March 23, 2007.

The Assisted Living Residence regulation was also discussed at the Stakeholder Planning Team on April 9, 2007.

Regulatory Analysis Form

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Costs are expected to be incurred by the regulated community beginning in Fiscal Year 2009-2010 ranging from \$0.008 million to \$0.365 million per assisted living residence based on a 75-bed assisted living residence. At a minimum, all assisted living residences would be required to pay a licensure fee amounting to the \$0.008 million on average. This cost assumes a flat application or renewal fee of \$500 per home and an additional fee of \$105 per bed. It is assumed these fees will increase in the out years based on the inflation rate. Additional costs may be incurred, which when added to the licensing fee brings the total potential cost up to the maximum estimated average cost of \$0.365 million in the first year.

These costs may or may not be incurred depending upon each facility's current status in relation to potential new costs imposed by the regulation. The majority of the costs relate to additional personnel expense in administering medication, enhanced reporting and additional administrative costs for resident care. It is assumed that those facilities that choose to apply for Assisted Living Residence licensure will already comply with the facility structural requirements of the proposed regulations, so no costs are assumed for structural modifications. It is assumed that 100 assisted living residences will incur these costs in FY 2009-2010; 150 assisted living residences in FY 2010-2011; 200 assisted living residences in FY 2011-2012; and 250 assisted living residences in FY 2012-2013.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department estimates administrative costs to implement this change at \$0.651 million state funds in Fiscal Year 2008-2009 and decreasing to \$0.103 million state funds in Fiscal Year 2009-2010 as a result of revenues collected from assessment of the licensure fee to the regulated community.

Wade Wilson
for
Linda

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY + 1 Year	FY + 2 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings						
COSTS:						
Regulated Community	\$0	\$0	\$0.838M to \$36.537 M	\$1.280M to \$57.253 M	\$1.739 M to \$80.250 M	\$2.214M to \$105.469 M
Local Government						
State Government	\$0	\$0.651 M	\$0.103 M	(\$0.078) M	\$0.056 M	(\$0.139) M
Total Costs	\$0	\$0.651 M	\$0.103 M	(\$0.078) M	\$0.056 M	(\$0.139) M
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses						

Regulatory Analysis Form

(20a) Explain how the cost estimates listed above were derived.

The cost shown above for the regulated community is the maximum amount that is anticipated to be incurred. Section 17 shows this cost as a range from \$0.008 million to \$0.365 million for a 75-bed assisted living residence. This fiscal analysis assumes that during Fiscal Year 2009-2010, one hundred 75-bed assisted living residences will be in place and estimates a maximum potential cost of \$36.537 million. The cost for each succeeding year increases based on an extra 50 -75 bed assisted living residences each year, (150 assisted living residences in Fiscal Year 2010-2011, 200 assisted living residences in Fiscal Year 2011-2012, and 250 assisted living residences in Fiscal Year 2012-2013) as well as inflationary increases in costs.

The administrative costs for personnel have been estimated based on hiring sufficient staff in order to obtain licensure of an assisted living residence. Staffing is expected to include Department of Public Welfare inspectors, supervisors, clerical and an attorney. Administrative operational expenses are expected to be incurred for general operating and systems support work. It is estimated that 100 assisted living residences will need to be inspected/licensed during Fiscal Year 2009-2010. Staff will need to be hired in Fiscal Year 2008-2009 in order to ensure they are trained and ready to begin work on July 1, 2009. In Fiscal Year 2008-2009 it is anticipated that 8 staff will be required for one-half year at a cost of \$0.330 million while operational expense is estimated at \$0.321 million (including one-time costs of \$0.151 million) for a total cost of \$0.651 million. For Fiscal Year 2009-2010 it is anticipated that 8 staff will be required for the full year at an estimated cost of \$0.692 million, operational costs will amount to \$0.249 million for a total of \$0.941 million. The Fiscal Year 2009-2010 costs are anticipated to be offset by \$0.838 million of licensure fees assessed the regulated community resulting in net anticipated cost to the State of \$0.103 million. It is assumed more assisted living residences will need to be inspected and licensed in out years so that both staff/operating costs and revenue from licensing fees will increase in out years.

12/15/11
for
Linda

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY - 2	FY - 1	Current FY
Co. Adm. Statewide	\$34.257 M	\$41.588 M	\$33.780 M	\$36.832 M

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This proposed regulation establishes the minimum standards for licensure of assisted living residences to allow individuals to age in place. The regulation protects consumers' health and safety, privacy and autonomy while at the same time balancing providers' concerns related to liability and individual choice.

The establishment of Assisted Living Residence licensure will provide Pennsylvania's citizens with another choice when they consider their long-term care service needs. An individual that chooses to reside in an assisted living residence will have the opportunity to age in place and could delay or prevent the need for placement in a nursing facility.

Regulatory Analysis Form

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered since this proposed regulation was mandated by Act 2007-56.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than Federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions that are more stringent than Federal law.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Surveys of other states have shown a variety of standards for building, equipment, operation, care, program and services, training, staffing and for the issuance of licenses for assisted living residences. Based on the review of those surveys the Department has determined that the proposed regulations will not put the Commonwealth at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The proposed regulation does not affect existing or proposed regulations of the Department or other state agencies.

Regulatory Analysis Form

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Although no public hearings are currently scheduled the Department will meet and discuss specific issues relating to the proposed regulation with affected individuals and organizations, based on the public comments received.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attached copies of forms or reports which will be required as a result of implementation, if available.

Because this is a new regulation it will not change existing reporting, record keeping or paperwork requirements. However, the proposed regulation will increase the paperwork requirements for the Commonwealth and for providers who apply for licensure as assisted living residences. The new forms required by these proposed regulations are under development and not available at this time. The following forms will be required: preadmission screening, initial and annual assessments, incident reports, excludable conditions, support plans, training institution registration, waiver requests and application for licensure.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This proposed regulation applies to elderly individuals who choose to live in an assisted living residence and allows them to age in place.

There are special provisions relating to special care units that serve individuals with Alzheimer's and dementia and other cognitive and neurological impairments. The proposed regulation will also provide housing for individuals with disabilities.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date for the proposed regulation is July 1, 2009.

(31) Provide the schedule for continual review of the regulation.

The Department will review the regulation on an ongoing basis to assess the appropriateness and effectiveness of the regulation. In addition, specific regulatory issues raised by members of the Medical Assistance Advisory Committee (MAAC), the Consumer Subcommittee of the MAAC, the Long-Term Care Subcommittee of the MAAC, the Community Living Advisory Committee, and the Stakeholder Planning Team will be researched and addressed as needed. The Department will also monitor the impact of the regulation through regular audits and utilization management reviews to determine the effectiveness of the regulation with respect to consumers of long-term care services and the industry.

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: <u><i>Amy M. Elliott</i></u> (Deputy Attorney General) <u>JUL 24 2008</u> Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>DEPARTMENT OF PUBLIC WELFARE</u> (Agency)</p> <p>LEGAL COUNSEL: <u><i>Ruth D. O'Brien</i></u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>#14-514</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u><i>Estelle B. Richman</i></u></p> <p>TITLE: <u>SECRETARY OF PUBLIC WELFARE</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agency</p> <p>By: <u><i>Andrew C. Clark</i></u> Andrew C. Clark <u>JUN 6 2008</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF LONG TERM LIVING

[55 Pa.Code Chapter 2800]

Assisted Living Residences

Statutory Authority

Notice is hereby given that the Department of Public Welfare (Department) under the authority of sections 211, 213 and Article X of the Public Welfare Code, Act of June 13, 1967, P.L. 31 No. 21 (62 P.S. §§ 211, 213 and 1001-1087), intends to adopt the regulation set forth in Annex A.

Purpose of Regulation

The purpose of this proposed regulation is to adopt the minimum standards for building, equipment, operation, resident care, program and services, staffing qualifications and training, and for the issuance of licenses for assisted living residences operated in Pennsylvania.

Background

Act 2007-56 was enacted in Pennsylvania on July 25, 2007. Prior to that time, there was no legal definition for assisted living in Pennsylvania. Act 56 directed the Department to adopt regulations establishing minimum licensing standards for assisted living residences which "meet or exceed" standards established for personal care homes under Title 55 Pa.Code Chapter 2600 (relating to personal care homes). 62 P.S. § 1021(a)(2)(i).

Act 56 was intended to recognize that assisted living residences are a significant long-term care alternative nationwide. Assisted living residences are a combination of housing and supportive services, as needed. They are designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice. In enacting Act 56, the General Assembly found that it is in the best interests of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need such care.

Under the Act, the Department was directed to develop regulations in consultation with industry stakeholders, consumers and other interested parties. 62 P.S. § 1021(d). To accomplish this legislative directive, the Department commenced a series of nine stakeholder meetings beginning in October of 2007 and ending in April 2008. Over thirty-five stakeholders were invited to participate, including disability advocates, advocates for older adults, consumers, union representatives, an elder law attorney, public housing agencies, trade associations for profit and non-profit long-term care nursing facilities and many other interested parties. The workgroup advised the Department on many of the novel features of Act 56 related to assisted living residences and also provided varied and diverse perspectives on how the regulation should be crafted. The Department has incorporated many of their recommendations into this proposed rulemaking.

Requirements

The proposed regulation incorporates the new definitions in Act 56 that are unique to assisted living residences. These include:

- Age in place or aging in place
- Assisted living residence
- Assisted living residence administrator
- Cognitive support services
- Informed consent agreement
- Special care designation and
- Supplemental health care services

In addition, the proposed regulation establishes requirements for individual living units within the assisted living residence, including square footage and kitchen capacity requirements. Requirements for special care units for individuals with cognitive impairments such as Alzheimer's disease or dementia are also included in this proposed rulemaking.

The proposed regulation also requires that individuals, prior to admission, or within 24 hours after admission to the assisted living residence, be provided with a written contract containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming, costs and fees.

To further ensure that individuals residing in assisted living residences are allowed to age in place, the proposed regulation also establishes requirements for assisted living residence services including core services and supplemental health care services.

New requirements related to informed consent agreements are also proposed to allow individuals and providers to manage risks that may result from consumers who wish to direct their own care while residing in the assisted living residence. The proposed rulemaking also creates standards for transfer and discharge.

Act 56 also directed the Department to set fees for application for assisted living licensure as well as license renewal. These new fees are included in the proposed rulemaking. The Act also provides for an abbreviated annual licensure visit when the residence has a history of exemplary compliance. The proposed regulation defines "exemplary compliance". Preadmission screening, resident assessments and support plans as well as enhanced administrator and staff qualifications and training are also covered in the proposed rulemaking. The proposed regulation also provides for certain medical conditions that would exclude an individual from being admitted or retained in an assisted living residence; however, the regulation also provides for exceptions to be granted in certain instances.

Affected Individuals and Organizations

Individuals who choose to live in an assisted living residence are affected by the proposed regulation. Providers of assisted living residences are also affected.

Accomplishments and Benefits

This proposed regulation establishes the minimum standards for licensure of assisted living residences to allow individuals to age in place. The proposed regulation protects consumers' health and safety, privacy and autonomy while at the same time balancing providers' concerns related to liability and individual choice.

Fiscal Impact

The Department estimates administrative costs to implement this change at \$0.651 million state funds in Fiscal Year 2008-2009 and decreasing to \$0.103 million state funds in Fiscal Year 2009-2010 as a result of revenues collected from assessment of the licensure fee to the regulated community.

The Department estimates that the costs incurred by the regulated community beginning in Fiscal Year 2009-2010 will range from \$0.008 million to \$0.365 million per assisted living residence based on a 75-bed assisted living residence. At a minimum, all assisted living residences would be required to pay a licensure fee amounting to the \$0.008 million on average. This cost assumes a flat application or renewal fee of \$500 per home and an additional fee of \$105 per bed. Additional costs may be incurred, which when added to the licensing fee brings the total potential cost up to the maximum estimated average cost of \$0.365 million in the first year. These costs may or may not be incurred depending upon each facility's current status in relation to potential new costs imposed by the regulation. The majority of the costs relate to additional personnel expense in administering medication, enhanced reporting and additional administrative costs for resident care. It is assumed that those facilities that choose to apply for Assisted Living Residence licensure will already comply with the facility structural requirements of the proposed regulations, so no costs are assumed for structural modifications. It is assumed that 100 assisted living residences will incur these costs in FY 2009-2010.

Paperwork Requirements

This proposed regulation contains the paperwork requirements for the Commonwealth and for providers who apply for licensure as assisted living residences. The following forms will be required:

Preadmission screening

Within 30 days prior to admission a preadmission screening form must be completed for all potential residents to assess whether the individual's service needs can be met by an assisted living residence.

Assessment

An assisted living residence will be required to complete a written initial assessment form within 15 days of admission of an individual. Additional assessments

must be completed at least annually or upon significant change in the resident's condition.

Incident Reporting

An assisted living residence will be required to submit written reports to the Department in instances such as the death of a resident, attempted suicide, an injury, illness or trauma suffered by a resident that requires treatment at a hospital or medical facility, violations of a resident's rights, misuse of a resident's funds by the residence's staff or legal entity, outbreak of serious communicable diseases, and other incidences relating to the resident's well-being.

Excludable Conditions

An assisted living residence will also be required to submit a form to the Department in instances where a residence wants to admit or retain an individual whose medical condition would otherwise prevent their admission or continued stay in the residence. These are referred to as "excludable conditions".

Support Plans

An assisted living residence is also required to develop and implement a support plan within 30 days of a resident's admission that documents the resident's medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services. In addition, the assisted living residence is required to review each resident's support plan quarterly and revise the support plan as the resident's needs change.

Waivers

An assisted living residence will also be required to submit a written request to the Department for a waiver of a specific requirement contained in the regulations.

Training Institution Registration

An educational institution, association, professional society or organization must submit an application to the Department for registration as an institution and for approval of a course of study for the purpose of qualifying applicants for certification as assisted living residence administrators.

Application for Licensure

In addition, assisted living residences will be required to complete an application for licensure, resident-residence contract and informed consent agreements.

Effective Date

The proposed effective date for the regulation is July 1, 2009.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Gail Weidman, Office of Long Term Care Living, within 30 calendar days after the date of publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference Regulation No. 14-514 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users).

Regulatory Review Act

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **JUL 28 2008** the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

CHAPTER 2800. Assisted Living Residences

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GENERAL PROVISIONS

§ 2800.1. Purpose.

(a) The purpose of this chapter is to protect the health, safety and well-being of assisted living residents.

(b) Assisted living residences are a significant long-term care alternative to allow individuals to age in place. Residents who live in assisted living residences that meet the requirements in this chapter will receive the assistance they need to age in place and develop and maintain maximum independence, self-determination, and personal choice.

§ 2800.2. Scope.

(a) This chapter applies to assisted living residences as defined in this chapter, and contains the minimum requirements that shall be met to obtain a license to operate an assisted living residence.

(b) This chapter does not apply to personal care homes, domiciliary care homes, independent living communities or commercial boarding residences.

§ 2800.3. Inspections and licenses.

(a) The Department will annually conduct at least one onsite unannounced inspection of each assisted living residence.

(b) Additional announced or unannounced inspections may be conducted at the Department's discretion.

(c) The Department may conduct an abbreviated annual licensure visit if the assisted living residence has established a history of exemplary compliance.

(d) A license will be issued to the legal entity by the Department if, after an investigation by an authorized agent of the Department, the requirements for a license are met.

(e) The assisted living residence shall post the current license, a copy of the current license inspection summary issued by the Department and a copy of this chapter in a conspicuous and public place in the assisted living residence.

§ 2800.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ADL - Activities of daily living - The term includes eating, drinking, ambulating, transferring in and out of a bed or chair, toileting, bladder and bowel management, personal hygiene, securing health care, managing health care, self-administering medication and proper turning and positioning in a bed or chair.

Abuse - The occurrence of one or more of the following acts:

(i) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(ii) The willful deprivation by the assisted living residence or its staff persons of goods or services which are necessary to maintain physical or mental health.

(iii) Sexual harassment, rape or abuse, as defined in 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

(iv) Exploitation by an act or a course of conduct, including misrepresentation or failure to obtain informed consent which results in monetary, personal or other benefit, gain or profit for the perpetrator, or monetary or personal loss to the resident.

(v) Neglect of the resident, which results in physical harm, pain or mental anguish.

(vi) Abandonment or desertion by the assisted living residence or its staff persons.

Adult - An individual who is 18 years of age or older.

Ancillary staff person - An individual who provides services for the residents other than activities of daily living.

Age in place or aging in place - Receiving care and services at a licensed assisted living residence to accommodate a resident's changing needs and preferences in order to allow the resident to remain in the assisted living residence.

Area agency on aging - The local agency designated by the Department of Aging as defined in Section 2202-A of the Act of April 9, 1929 (P.L. 177, No. 175), known as the Administrative Code.

Assisted living residence or residence - Any premises in which food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding 24-hours for four or more adults who are not

relatives of the operator, who require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.

Assisted living residence administrator - An individual who is charged with the general administration of an assisted living residence, whether or not such individual has an ownership interest in the residence or his function and duties are shared with other individuals.

Agent - An individual authorized by the Department to enter, visit, inspect or conduct an investigation of an assisted living residence.

Appropriate assessment agency - An organization serving adults who are older or adults with disabilities, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency or an individual in an occupation maintaining contact with adults who are older and adults with disabilities, such as medicine, nursing or rehabilitative therapies.

CAM - Complementary and alternative medications - Practices, substances and ideas used to prevent or treat illness or promote health and well-being outside the realm of modern conventional medicine. Alternative medicine is used alone or instead of conventional medicine. Complementary medicine is used along with or in addition to conventional medicine.

CPR - Cardiopulmonary resuscitation.

Cognitive support services - Services provided to an individual who has memory impairments and other cognitive problems which significantly interfere with his ability to carry out activities of daily living without assistance and who requires that supervision, monitoring and programming be available 24 hours per day, 7 days per week, in order to reside safely in the setting of his choice. The term includes assessment, health support services and a full range of dementia-capable activity programming and crisis management.

Commercial boarding residence - A type of residential living facility providing only food and shelter, or other services normally provided by a hotel, for payment, for individuals who require no services beyond food, shelter and other services usually found in hotel or apartment rental.

Complaint - A written or oral criticism, dispute or objection presented by or on behalf of a resident to the Department regarding the care, operations or management of an assisted living residence.

Day - Calendar day.

Dementia - A clinical syndrome characterized by a decline of long duration in mental function in an alert individual. Symptoms of dementia may include memory loss, personality change, chronic wandering and the loss or diminishing of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

Department - The Department of Public Welfare of the Commonwealth.

Designated person - An individual who may be chosen by the resident and documented in the resident's record, to be notified in case of an emergency, termination of service, assisted living residence closure or other situations as indicated by the resident or as required by this chapter. A designated person may be the resident's legal representative or an advocate.

Designee - A staff person authorized in writing to act in the administrator's absence.

Direct care staff person - A staff person who directly assists residents with activities of daily living, and instrumental activities of daily living and provides services or is otherwise responsible for the health, safety and well-being of the residents.

Discharge - Termination of an individual's residency in an assisted living residence.

Emergency medical plan - A plan that ensures immediate and direct access to medical care and treatment for serious injury or illness, or both.

Exemplary compliance - Three consecutive years of deficiency-free inspections.

Financial management -

(i) A personal care service requested or required by the resident in accordance with his support plan, which includes taking responsibility for or assisting with paying bills, budgeting, maintaining accurate records of income and disbursements, safekeeping funds, and making funds available to the resident upon request.

(ii) The term does not include solely storing funds in a safe place as a convenience for a resident.

Fire safety expert - A member of a local fire department, fire protection engineer, Commonwealth-certified fire protection instructor, college instructor in fire science, county or Commonwealth fire school, volunteer trained and certified by a county or Commonwealth fire school, an insurance company loss control

representative, Department of Labor and Industry building code inspector or construction code official.

Health care or human services field – Includes the following:

- (i) Child welfare services.
- (ii) Adult services.
- (iii) Older adult services.
- (iv) Mental health/mental retardation services.
- (v) Drug and alcohol services.
- (vi) Services for individuals with disabilities.
- (vii) Medicine.
- (viii) Nursing.
- (ix) Rehabilitative services.

(x) Any other human service or occupation that maintains contact with adults who are older or adults and children with disabilities.

Housekeeping - The cleaning of the living unit and common areas. Cleaning of the living unit includes at least weekly dusting, sweeping, vacuuming, mopping, emptying trash, and cleaning of bathroom, counters, refrigerator, and microwave oven. Housekeeping for common areas mean keeping them in clean sanitary condition.

IADL - Instrumental activities of daily living - The term includes the following activities when done on behalf of a resident:

- (i) Doing laundry.
- (ii) Shopping.
- (iii) Securing and using transportation.
- (iv) Financial management.
- (v) Using a telephone.
- (vi) Making and keeping appointments.

- (vii) Caring for personal possessions.
- (viii) Writing correspondence.
- (ix) Engaging in social and leisure activities.
- (x) Using a prosthetic device.
- (xi) Obtaining and keeping clean, seasonal clothing.
- (xii) Housekeeping.

Informed consent agreement - A formal, mutually agreed upon, written understanding which:

- (i) Results after thorough discussion among the assisted living residence staff, the resident and any individuals the resident wants to be involved.
- (ii) Identifies how to balance the assisted living residence's responsibilities to the individuals it serves with a resident's choices and capabilities with the possibility that those choices will place the resident or other residents at risk of harm.
- (iii) Documents the resident's choice to accept or refuse a service offered by or at the residence.

Legal entity - A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of an assisted living residence.

Legal representative - An individual who holds a power of attorney, a court-appointed guardian or other person authorized to act for the resident.

License - A certificate of compliance issued by the Department permitting the operation of an assisted living residence, at a given location, for a specific period of time, for a specified capacity, according to Chapter 20 (relating to licensure or approval of facilities and agencies).

Licensee - A person legally responsible for the operations of an assisted living residence duly licensed in accordance with this chapter.

Long-term care ombudsman - A representative of the Office of the State Long-Term Care Ombudsman in the Department of Aging who investigates and seeks to resolve complaints made by or on behalf of individuals who are 60 years of age or older who are consumers of long-term care services. These complaints may relate to action, inaction or decisions of providers of long-term care services,

of public agencies, of social service agencies or their representatives, which may adversely affect the health, safety, well-being or rights of these consumers.

Mobile resident -

(i) A resident who is physically and mentally capable of vacating the assisted living residence on the resident's own power or with limited physical or oral assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path.

(A) Physical assistance means assistance in getting to one's feet or into a wheelchair, walker or prosthetic device.

(B) Oral assistance means giving instructions to assist the resident in vacating the assisted living residence.

(ii) The term includes an individual who is able to effectively operate an ambulation device required for moving from one place to another, and able to understand and carry out instructions for vacating the assisted living residence.

Neglect - The failure of an assisted living residence or its staff persons to provide goods or services essential to avoid a clear and serious threat to the physical or mental health of a resident. The failure or omission to provide the care, supervision and services that the assisted living residence has voluntarily, or by contract, agreed to provide and that are necessary to maintain the resident's health, safety and well-being, including personal care services, food, clothing, medicine, shelter, supervision and medical services. Neglect may be repeated conduct or a single incident.

OTC - Over the counter or nonprescription.

Personal care services - Assistance or supervision in ADL or IADL, or both.

Premises -The grounds and buildings on the same grounds, used for providing services required by residents.

Protective services unit - The local area agency on aging unit designated by the Department of Aging to investigate allegations of abuse of adults who are 60 years of age or older and assess the need for protective interventions.

Referral agent - An agency or individual who arranges for or assists, or both, with placement of a resident into an assisted living residence.

Relative - A spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

Resident - An individual, unrelated to the legal entity, who resides in an assisted living residence, and who may require personal care services or supplemental health care services, or both.

Resident with mobility needs - An individual who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit a building.

Restraint - A manual, chemical or mechanical device used to limit or restrict the movement or normal function of an individual or a portion of the individual's body.

SSI - Supplemental Security Income.

Secretary - The Secretary of the Department.

Special care designation - A licensed assisted living residence or a distinct part of the residence which is specifically designated by the Department as capable of providing cognitive support services to residents with severe cognitive impairments, including dementia or Alzheimer's disease, in the least restrictive manner to ensure the safety of the resident and others in the residence while maintaining the resident's ability to age in place.

Staff person - An individual who works for the assisted living residence for compensation either on payroll or under contract.

Supplemental health care services - The provision by an assisted living residence of any type of health care service that allows residents to age in place, either directly or through contractors, subcontractors, agents or designated providers, except for any service that is required by law to be provided by a health care facility pursuant to the act of July 19, 1979 (P.L. 130, No. 48), known as the "Health Care Facilities Act."

Support plan - A written document that describes for each resident the resident's care, service or treatment needs based on the assessment of the resident, and when the care, service or treatment will be provided, and by whom.

Transfer - Movement of a resident within the assisted living residence or to a temporary placement outside the assisted living residence.

Volunteer -

(i) An individual who, of his own free will, and without monetary compensation, provides direct care services for residents in the assisted living residence.

(ii) The term does not include visitors or individuals who provide nondirect services or entertainment on an occasional basis.

§ 2800.5. Access.

(a) The administrator or a designee shall provide, upon request, immediate access to the residence, the residents and records to:

(1) Agents of the Department.

(2) Representatives of the area agency on aging.

(3) Representatives of the Long-Term Care Ombudsman Program.

(4) Representatives of the protection and advocacy system for individuals with disabilities designated under the Protection and Advocacy for Individual Rights Program of the Vocational Rehabilitation and Rehabilitation Services Act (29 U.S.C.A. § 794e), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C.A. §§ 10801-10851) and the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15041-15043).

(b) The administrator or a designee shall permit community service organizations and representatives of legal services programs to have access to the residence during visitation hours or by appointment for the purpose of assisting or informing the residents of the availability of services and assistance. A resident or a resident's designated person if so authorized may decline the services of the community service organization or the legal service program.

GENERAL REQUIREMENTS

§ 2800.11. Procedural requirements for licensure or approval of assisted living residences.

(a) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to assisted living residences.

(b) Before a residence is initially licensed and permitted to open, operate or admit residents, it will be inspected by the Department and found to be in compliance with applicable laws and regulations including this chapter. The Department will reinspect newly licensed residences within 3 months of the date of initial licensure.

(c) After the Department determines that a residence meets the requirements for a license, the Department's issuance or renewal of a license to a residence is

contingent upon receipt by the Department of the following fees based on the number of beds in the residence, as follows

(1) A \$500 license application or renewal fee.

(2) A \$105 per bed fee that may be adjusted by the Department annually at a rate not to exceed the consumer price index. The Department shall publish a notice in the *Pennsylvania Bulletin* when the per bed fee is increased.

(d) No person, organization or program shall use the term "assisted living" in any name or written material, except as a licensee in accordance with this chapter. Corporate entities which own subsidiaries that are licensed as assisted living residences may not use the term assisted living in any written material to market programs that are not licensed in accordance with this chapter.

§ 2800.12. Appeals.

(a) General rule. Subject to the provisions of subsection (b), appeals related to the licensure or approval of the assisted living residence shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure (GRAPP)).

(b) Exception. The 10-day appeal period provided in 1 Pa. Code § 35.20 (relating to appeals from the actions of the staff) of the GRAPP is superseded by a 30-day appeal period.

§ 2800.13. Maximum capacity.

(a) The maximum capacity is the total number of residents who are permitted to reside in the residence at any time. A request to increase the capacity shall be submitted to the Department and other applicable authorities and approved prior to the admission of additional residents. The maximum capacity is limited by physical plant space and other applicable laws and regulations.

(b) The maximum capacity specified on the license may not be exceeded.

§ 2800.14. Fire safety approval.

(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101-7210.1103) is required.

(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.

(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.

(e) Fire safety approval must be renewed at least every 3 years, or more frequently, if requested by the Department.

§ 2800.15. Abuse reporting covered by law.

(a) The residence shall immediately report suspected abuse of a resident served in the residence in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.701-10225.707) and 6 Pa. Code § 15.21-15.27 (relating to reporting suspected abuse) and comply with the requirements regarding restrictions on staff persons.

(b) If there is an allegation of abuse of a resident involving a residence's staff person, the residence shall immediately develop and implement a plan of supervision or suspend the staff person involved in the alleged incident.

(c) The residence shall immediately submit to the Department's assisted living residence office a plan of supervision or notice of suspension of the affected staff person.

(d) The residence shall immediately notify the resident and the resident's designated person of a report of suspected abuse or neglect involving the resident.

§ 2800.16. Reportable incidents and conditions.

(a) A reportable incident or condition includes the following:

(1) The death of a resident.

(2) A physical act by a resident to commit suicide.

(3) An injury, illness or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

(4) A violation of a resident's rights in §§ 2800.41-2800.44 (relating to resident rights).

(5) An unexplained absence of a resident for 24 hours or more, or when the support plan so provides, a period of less than 24 hours, or an absence of a resident from a special care unit.

(6) Misuse of a resident's funds by the residence's staff persons or legal entity.

(7) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions).

(8) Food poisoning of residents.

(9) A physical or sexual assault by or against a resident.

(10) Fire or structural damage to the residence.

(11) An incident requiring the services of an emergency management agency, fire department or law enforcement agency, except for false alarms.

(12) A complaint of resident abuse, suspected resident abuse or referral of a complaint of resident abuse to a local authority.

(13) A prescription medication error as defined in § 2800.188 (relating to medication errors).

(14) An emergency in which the procedures under § 2800.107 (relating to emergency preparedness) are implemented.

(15) An unscheduled closure of the residence or the relocation of the residents.

(16) Bankruptcy filed by the legal entity.

(17) A criminal conviction against the legal entity, administrator or staff that is subsequent to the reporting on the criminal history checks under § 2800.51 (relating to criminal history checks).

(18) A termination notice from a utility.

(19) A violation of the health and safety laws under § 2800.18 (relating to applicable laws).

(20) An absence of staff or inadequate staff to supervise residents.

(b) The residence shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents and conditions.

(c) The residence shall report the incident or condition to the Department's assisted living residence office or the assisted living residence complaint hotline within 24 hours in a manner designated by the Department. Abuse reporting shall also follow the guidelines in § 2800.15 (relating to abuse reporting covered by law).

(d) The residence shall submit a final report, on a form prescribed by the Department, to the Department's assisted living residence office immediately following the conclusion of the investigation.

(e) If the residence's final report validates the occurrence of the alleged incident or condition, the affected resident and other residents who could potentially be harmed or his designated person shall also be informed immediately following the conclusion of the investigation.

(f) The residence shall keep a copy of the report of the reportable incident or condition.

§ 2800.17. Confidentiality of records.

Resident records shall be confidential, and, except in emergencies, may not be accessible to anyone other than the resident, the resident's designated person if any, staff persons for the purpose of providing services to the resident, agents of the Department and the long-term care ombudsman without the written consent of the resident, an individual holding the resident's power of attorney for health care or health care proxy or a resident's designated person, or if a court orders disclosure.

§ 2800.18. Applicable laws.

A residence shall comply with applicable Federal, State and local laws, ordinances and regulations.

§ 2800.19. Waivers.

(a) A residence may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request must be on a form prescribed by the Department. The Secretary, or the Secretary's appointee, may grant a waiver of a specific requirement of this chapter if the following conditions are met:

- (1) There is no jeopardy to the residents.

(2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the residents.

(3) Residents will benefit from the waiver of the requirement.

(b) The scope, definitions, applicability or residents' rights, assisted living service delivery requirements, special care designation requirements, disclosure requirements, complaint rights or procedures, notice requirements to residents or family, contract requirements, reporting requirements, fire safety requirements, assessment, support plan or service delivery requirements under this chapter may not be waived.

(c) At least 30 days prior to the submission of the completed written waiver request to the Department, the residence shall provide a copy of the completed written waiver request to the affected resident and designated person to provide the opportunity to submit comments to the Department. The residence shall provide the affected resident and designated person with the name, address and telephone number of the Department staff person to submit comments.

(d) The residence shall discuss the waiver request with the affected resident and designated person upon the request of the resident or designated person.

(e) The residence shall notify the affected resident and designated person of the approval or denial of the waiver. A copy of the waiver request and the Department's written decision shall be posted in a conspicuous and public place within the residence.

(f) The Department will review waivers annually to determine compliance with the conditions required by the waiver. The Department may revoke the waiver if the conditions required by the waiver are not met.

§ 2800.20. Financial management.

(a) A resident may manage his personal finances unless he has a guardian of his estate.

(b) If the residence provides assistance with financial management or holds resident funds, the following requirements apply:

(1) The residence shall keep a record of financial transactions with the resident, including the dates, amounts of deposits, amounts of withdrawals and the current balance.

(2) Resident funds shall be disbursed during normal business hours within 24 hours of the resident's request.

- (3) The residence shall obtain a written receipt from the resident for cash disbursements at the time of disbursement.
- (4) Resident funds and property shall only be used for the resident's benefit.
- (5) Commingling of resident funds and residence funds is prohibited.
- (6) If a residence is holding more than \$200 for a resident for more than 2 consecutive months, the administrator shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.
- (7) The legal entity, administrator and staff persons of the residence are prohibited from being assigned power of attorney or guardianship of a resident or a resident's estate.
- (8) The residence shall give the resident and the resident's designated person, an itemized account of financial transactions made on the resident's behalf on a quarterly basis.
- (9) A copy of the itemized account shall be kept in the resident's record.
- (10) The residence shall provide the resident the opportunity to review his own financial record upon request during normal business hours.

§ 2800.21. Offsite services.

If services or activities are provided by the residence at a location other than the premises, the residence shall ensure that the residents' support plans are followed and that resident health and safety needs are met.

§ 2800.22. Application and Admission.

- (a) The following admission documents shall be completed for each resident:
 - (1) Preadmission screening completed prior to admission on a form specified by the Department.
 - (2) Medical evaluation completed 60 days prior to or 15 days after admission on a form specified by the Department.
 - (3) Assisted living resident assessment completed within 15 days after admission on a form specified by the Department.
 - (4) Support plan developed and implemented within 30 days after admission.

(5) Resident-residence contract completed prior to admission or within 24 hours after admission.

(b) Upon application for residency and prior to admission to the residence, the licensee must provide each potential resident or potential resident's designated person with written disclosures that include:

(1) A list of the nonwaivable resident rights.

(2) A copy of the agreement the resident will be asked to sign.

(3) A copy of residence rules and resident handbook. The resident handbook shall be approved by the Department.

(4) Specific information about:

(i) What services are offered by the residence.

(ii) The cost of those services to the potential resident.

(iii) The contact information for the Department.

(iv) The licensing status of the most recent inspection reports and instructions for access to the Department's public website for information on the residence's most recent inspection reports.

(v) Disclosure of any waivers that have been approved for the residence and are still in effect.

§ 2800.23. Activities.

(a) A residence shall provide each resident with assistance with ADLs as indicated in the resident's assessment and support plan.

(b) A residence shall provide each resident with assistance with IADLs as indicated in the resident's assessment and support plan.

§ 2800.24. Personal hygiene.

A residence shall provide the resident with assistance with personal hygiene as indicated in the resident's assessment and support plan. Personal hygiene includes one or more of the following:

(1) Bathing.

(2) Oral hygiene.

- (3) Hair grooming and shampooing.
- (4) Dressing, undressing and care of clothes.
- (5) Shaving.
- (6) Nail care.
- (7) Foot care.
- (8) Skin care.

§ 2800.25. Resident-residence contract.

(a) Prior to admission, or within 24 hours after admission, a written resident-residence contract between the resident and the residence shall be in place. The administrator or a designee shall complete this contract and review and explain its contents to the resident and the resident's designated person if any, prior to signature.

(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees. The contract shall run month-to-month with automatic renewal unless terminated by the resident with 14 days' notice or by the residence with 30 days' notice in accordance with § 2800.228 (relating to transfer and discharge).

(c) At a minimum, the contract must specify the following: .

(1) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid. A personal needs allowance is the amount that a resident shall be permitted to keep for his personal use.

(2) A fee schedule that lists the actual amount of charges for the residence's core assisted living services that the individual is purchasing, including:

(i) Assistance with unscheduled ADLS and supplemental health care services.

(ii) Three meals a day and snacks as provided in § 2800.161 (relating to nutritional adequacy).

(iii) Laundry services as provided in § 2800.105 (relating to laundry).

(iv) Housekeeping as provided in § 2800.4 (relating to definitions).

(v) Transportation in accordance with § 2800.171 (relating to transportation).

(vi) Medication management or administration as provided in §§ 2800.181 and 2800.182 (relating to self-administration and medication administration).

(vii) Daily planned social activities and socialization as provided in § 2800.221 (relating to activities program).

(3) An explanation of the annual assessment, medical evaluation and support plan requirements and procedures, which shall be followed if either the assessment or the medical evaluation indicates the need of another and more appropriate level of care.

(4) The party responsible for payment.

(5) The method for payment of charges for long distance telephone calls.

(6) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.

(7) The financial arrangements if assistance with financial management is to be provided.

(8) The residence's rules related to residence services, including whether the residence permits smoking.

(9) The conditions under which the resident-residence contract may be terminated including residence closure as specified in § 2800.228 (relating to transfer and discharge).

(10) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the residence's request to change the contract.

(11) A list of personal care services or supplemental health care services, or both, to be provided to the resident based on the outcome of the resident's support plan, a list of the actual rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made.

(12) Charges to the resident for holding a bed during hospitalization or other extended absence from the residence.

(13) Written information on the resident's rights and complaint procedures as specified in § 2800.41 (relating to notification of rights and complaint procedures).

(d) A residence may not seek or accept payments from a non-SSI resident of any funds received by the resident under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1-4751-12). If the residence will be assisting the resident to manage a portion of the rent rebate, the requirements of § 2800.20 (relating to financial management) may apply. There may be no charge for filling out this paperwork

(e) The resident, or a designated person, has the right to rescind the contract for up to 72 hours after the initial dated signature of the contract or upon receipt of the initial support plan. The resident shall pay only for the services received. Rescission of the contract must be in writing addressed to the residence.

(f) The residence may not require or permit a resident to assign assets to the residence in return for a life care contract/guarantee. A life care contract/guarantee is an agreement between the legal entity and the resident that the legal entity will provide care to the resident for the duration of the resident's life. Continuing care communities that have obtained a Certificate of Authority from the Insurance Department and have provided a copy of the certificate to the Department are exempt from this requirement.

(g) A copy of the signed resident-residence contract shall be given to the resident and a copy shall be filed in the resident's record.

(h) The service needs addressed in the resident's support plan shall be available to the resident every day of the year.

(i) The assisted living services included in the package the individual is purchasing shall be the contract price. Supplemental health care services must be packaged, contracted and priced separately from the resident-residence contract. Any other services other than supplemental health care services must be priced separately from the service package in the resident-residence contract.

§ 2800.26. Quality management.

(a) The residence shall establish and implement a quality management plan.

(b) The quality management plan shall address the periodic review and evaluation of the following:

- (1) The reportable incident and condition reporting procedures.
- (2) Complaint procedures.
- (3) Staff person training.

(4) Licensing violations and plans of correction, if applicable.

(5) Resident or family councils, or both, if applicable.

(c) The quality management plan shall include the development and implementation of measures to address the areas needing improvement that are identified during the periodic review and evaluation.

§ 2800.27. SSI recipients.

(a) If a residence agrees to admit a resident eligible for Supplemental Security Income (SSI) benefits, the residence's charges for actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current personal needs allowance.

(b) The administrator or staff persons may not include funds received as lump sum awards, gifts or inheritances, gains from the sale of property, or retroactive government benefits when calculating payment of rent for an SSI recipient or for a resident eligible for SSI benefits.

(c) The administrator or staff persons may not seek or accept any payments from funds received as retroactive awards of SSI benefits, but may seek and accept such payments only to the extent that the retroactive awards cover periods of time during which the resident actually resided in the residence and for which full payment has not been received.

(d) The administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

(1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.

(2) Laundry services for personal laundry, bed linens and towels, but not including dry cleaning or other specialized services.

(3) Personal care services.

(e) Third-party payments made on behalf of an SSI recipient and paid directly to the residence are permitted. These payments may not be used for food, clothing or shelter because to do so would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services for the resident that are not food, clothing or shelter.

§ 2800.28. Refunds.

(a) If, after the residence gives notice of transfer or discharge in accordance with § 2800.228(b) (relating to transfer and discharge), and the resident moves out of the residence before the 30 days are over, the residence shall give the resident a refund equal to the previously paid charges for rent, personal care services and supplemental health care services, if applicable, for the remainder of the 30-day time period. The refund shall be issued within 30-days of transfer or discharge. The resident's personal needs allowance shall be refunded within 2 business days of transfer or discharge.

(b) After a resident gives notice of the intent to leave in accordance with § 2800.25(b) (relating to resident-residence contract) and if the resident moves out of the residence before the expiration of the required 14 days, the resident owes the residence the charges for rent, personal care services and supplemental health care services, or both for the entire length of the 14-day time period for which payment has not been made.

(c) If no notice is required, as set forth in subsection (d), the resident shall be required to pay only for the nights spent in the residence.

(d) If the residence does not require a written notice prior to a resident's departure, the administrator shall refund the remainder of previously paid charges to the resident within 30 days of the date the resident moved from the residence.

(e) In the event of the death of a resident under 60 years of age, the administrator shall refund the remainder of previously paid charges to the resident's estate within 30 days from the date the living unit is cleared of the resident's personal property. In the event of the death of a resident 60 years of age and older, the residence shall provide a refund in accordance with the Elder Care Payment Restitution Act (35 P. S. §§ 10226.101-10226.107). The residence shall keep documentation of the refund in the resident's record.

(f) Within 30 days of either the termination of service by the residence or the resident's leaving the residence, the resident shall receive an itemized written account of the resident's funds, including notification of funds still owed the residence by the resident or a refund owed the resident by the residence. Refunds shall be made within 30 days of discharge.

(g) Upon discharge of the resident or transfer of the resident, the administrator shall return the resident's funds being managed or stored by the residence to the resident within 2 business days from the date the living unit is cleared of the resident's personal property.

§ 2800.29. Hospice care and services.

Hospice care and services that are licensed by the Department of Health as a hospice may be provided in an assisted living residence.

§ 2800.30. Informed consent process.

(a) Initiation of process.

(1) When a licensee determines that a resident's decision, behavior or action creates a dangerous situation and places the resident, other residents or staff members at imminent risk of substantial harm by the resident's wish to exercise independence in directing the manner in which they receive care, the licensee may initiate an informed consent process to address the identified risk and to reach a mutually agreed-upon plan of action with the resident or the resident's designated person. The initiation of an informed consent process does not guarantee that an informed consent agreement, which is agreeable to all parties, will be reached and executed.

(2) When a resident wishes to exercise independence in directing the manner in which they receive care, the resident may initiate an informed consent process to modify the support plan and attempt to reach a mutually agreed upon plan of action with the licensee. A cognitively impaired resident shall be eligible for an informed consent agreement only if the resident's legal representative is included in the negotiation of the informed consent agreement and executes the agreement.

(b) Notification.

(1) When the licensee chooses to initiate an informed consent process the provider shall do so by notifying the resident and, if applicable, the resident's designated person in writing and orally. The notification shall include a statement that the long-term care ombudsman is available to assist in the process and shall include the contact information for the ombudsman. For cognitively impaired residents, the ombudsman shall be automatically notified by the licensee. Notification shall be documented in the resident's file by the licensee.

(2) When a resident or, if applicable, the resident's legal representative chooses to initiate an informed consent negotiation, the resident or the resident's legal representative shall do so by notifying the licensee in writing or orally. Notification shall be documented in the resident's file by the licensee.

(c) Resident's involvement. A resident that is not cognitively impaired shall be entitled, but is not required, to involve his legal representative and physician, and any other individual the resident wants involved, to participate or assist in the discussion of the resident's wish to exercise independence and, if necessary, in developing a satisfactory informed consent agreement that balances the

resident's choices and capabilities with the possibility that the choices will place the resident or other residents at risk of harm.

(d) Informed consent meeting.

(1) In a manner the resident can understand the licensee must discuss the resident's wish to exercise independence in directing the manner in which he receives care. The discussion shall relate to the decision, behavior or action that places the resident or persons other than the resident in imminent risk of substantial harm and hazards inherent in the resident's action. The discussion shall include reasonable alternatives, if any, for mitigating the risk, the significant benefits and disadvantages of each alternative and the most likely outcome of each alternative. In the case of a resident with a cognitive impairment, the resident's legal representative shall participate in the discussion.

(2) A resident shall not have the right to place persons other than himself at risk, but, consistent with statutory and regulatory requirements, may elect to proceed with a decision, behavior or action affecting only his own safety or health status, foregoing alternatives for mitigating the risk, after consideration of the benefits and disadvantages of the alternatives including his wish to exercise independence in directing the manner in which he receives care. The licensee shall evaluate whether the resident understands and appreciates the nature and consequences of the risk, including the significant benefits and disadvantages of each alternative considered, and then must further ascertain whether the resident is consenting to accept or mitigate the risk with full knowledge and forethought.

(e) Successful negotiation. If the parties agree, the informed consent agreement shall be reduced to writing and signed by all parties, including all individuals engaged in the negotiation at the request of the resident, and shall be retained in the resident's file as part of the service plan.

(f) Unsuccessful negotiation. If the parties do not agree, the licensee shall notify the resident, the resident's legal representative and all individuals engaged in the informed consent negotiation at the request of the resident. The residence shall include information on the local ombudsman or the appropriate advocacy organization for assistance relating to the disposition and whether the licensee will issue a notice of discharge.

(g) Freedom from duress. An informed consent agreement must be voluntary and free of force, fraud, deceit, duress, coercion or undue influence, provided that a licensee retains the right to issue a notice of involuntary discharge in the event a resident's decision, behavior or action creates a dangerous situation and places persons other than the resident at imminent risk of substantial harm and, after a discussion of the risk, the resident declines alternatives to mitigate the risk.

(h) Individualized nature. An informed consent agreement shall be unique to the resident's situation and his wish to exercise independence in directing the manner in which he receives care. The informed consent agreement shall be utilized only when a resident's decision, behavior or action creates a situation and places the resident or persons other than the resident at imminent risk of substantial harm. A licensee shall not require execution of an informed consent agreement as a standard condition of admission.

(i) Liability. Execution of an informed consent agreement shall not constitute a waiver of liability beyond the scope of the agreement or with respect to acts of negligence or tort. An informed consent agreement shall not relieve a licensee of liability for violation of statutory or regulatory requirements promulgated under this chapter nor affect enforceability of regulatory provisions including those provisions governing admission or discharge or the permissible level of care in an assisted living residence.

(j) Change in resident's condition. An informed consent agreement must be updated following a significant change in the resident's condition that affects the risk potential to the resident or persons other than the resident.

RESIDENT RIGHTS

§ 2800.41. Notification of rights and complaint procedures.

(a) Upon admission, each resident and, if applicable, the resident's designated person, shall be informed of resident rights and the right to lodge complaints without intimidation, retaliation, or threats of retaliation by the residence or its staff persons against the reporter. Retaliation includes transfer or discharge from the residence.

(b) Notification of rights and complaint procedures shall be communicated in an easily understood manner and in a language understood by or mode of communication used by the resident and, if applicable, the resident's designated person.

(c) The Department's poster of the list of resident's rights shall be posted in a conspicuous and public place in the residence.

(d) A copy of the resident's rights and complaint procedures shall be given to the resident and, if applicable, the resident's designated person upon admission.

(e) A statement signed by the resident and, if applicable, the resident's designated person acknowledging receipt of a copy of the information specified in subsection (d), or documentation of efforts made to obtain signature, shall be kept in the resident's record.

§ 2800.42. Specific rights.

- (a) A resident may not be discriminated against because of race, color, religious creed, disability, ancestry, sexual orientation, national origin, age or sex.
- (b) A resident may not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way.
- (c) A resident shall be treated with dignity and respect.
- (d) A resident shall be informed of the rules of the residence and given 30 days' written notice prior to the effective date of a new residence rule.
- (e) A resident shall have access to a telephone in the residence to make calls in privacy. Nontoll calls shall be without charge to the resident.
- (f) A resident has the right to receive and send mail.
 - (1) Outgoing mail may not be opened or read by staff persons unless the resident requests.
 - (2) Incoming mail may not be opened or read by staff persons unless upon the request of the resident or the resident's designated person.
- (g) A resident has the right to communicate privately with and access the local ombudsman.
- (h) A resident has the right to practice the religion or faith of the resident's choice, or not to practice any religion or faith.
- (i) A resident shall receive assistance in accessing health care services.
- (j) A resident shall receive assistance in obtaining and keeping clean, seasonal clothing. A resident's clothing may not be shared with other residents.
- (k) A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to access, review and request corrections to the resident's record.
- (l) A resident has the right to furnish his living unit and purchase, receive, use and retain personal clothing and possessions.
- (m) A resident has the right to leave and return to the residence at times consistent with the residence rules and the resident's support plan.

(n) A resident has the right to relocate and to request and receive assistance, from the residence, in relocating to another facility. The assistance shall include helping the resident get information about living arrangements, making telephone calls and transferring records.

(o) A resident has the right to freely associate, organize and communicate with his friends, family, physician, attorney and any other person.

(p) A resident shall be free from restraints.

(q) A resident shall be compensated in accordance with State and Federal labor laws for labor performed on behalf of the residence. Residents may voluntarily and without coercion perform tasks related directly to the resident's personal space or common areas of the residence.

(r) A resident has the right to receive visitors at any time provided that such visits do not adversely affect other residents. A residence may adopt reasonable policies and procedures related to visits and access. If the residence adopts such policies and procedures they shall be binding on the residence.

(s) A resident has the right to privacy of self and possessions. Privacy shall be provided to the resident during bathing, dressing, changing and medical procedures.

(t) A resident has the right to file complaints on behalf of himself and others with any individual or agency and recommend changes in policies, residence rules and services of the residence without intimidation, retaliation or threat of discharge.

(u) A resident has the right to remain in the residence, as long as it is operating with a license, except as specified in § 2800.228 (relating to transfer and discharge).

(v) A resident has the right to receive services contracted for in the resident-residence contract.

(w) A resident has the right to use both the residence's procedures and external procedures, if any, to appeal involuntary discharge.

(x) A resident has the right to a system to safeguard a resident's money and property.

(y) To the extent prominently displayed in the written resident-residence contract, a residence may require residents to use providers of supplemental health care services as provided in § 2800.142 (relating to assistance with health care and

supplemental health care services). When the residence does not designate, the resident may choose the supplemental health care service provider.

§ 2800.43. Prohibition against deprivation of rights.

- (a) A resident may not be deprived of his rights.
- (b) A resident's rights may not be used as a reward or sanction.
- (c) Waiver of any resident right shall be void.

§ 2800.44. Complaint procedures.

- (a) Prior to admission, the residence shall inform the resident and the resident's designated person of the right to file and the procedure for filing a complaint with the Department's assisted living residence office, local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc. or law enforcement agency.
- (b) The residence shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter without retaliation or the threat of retaliation.
- (c) If a resident indicates that he wishes to make a written complaint, but needs assistance in reducing the complaint to writing, the residence shall assist the resident in writing the complaint.
- (d) The residence shall ensure investigation and resolution of complaints. The residence shall designate the staff person responsible for receiving complaints and determining the outcome of the complaint.
- (e) Within 2 business days after the submission of a written complaint, a status report shall be provided by the residence to the complainant. If the resident is not the complainant, the resident and the resident's designated person shall receive the status report unless contraindicated by the support plan. The status report must indicate the steps that the residence is taking to investigate and address the complaint.
- (f) Within 7 days after the submission of a written complaint, the residence shall give the complainant and, if applicable, the designated person, a written decision explaining the residence's investigation findings and the action the residence plans to take to resolve the complaint. If the resident is not the complainant, the affected resident shall receive a copy of the decision unless contraindicated by the support plan. If the residence's investigation validates the complaint allegations, a resident who could potentially be harmed or his designated person

shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan.

(g) The telephone number of the Department's assisted living residence office, the local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc., the local law enforcement agency, the Commonwealth Information Center and the assisted living residence complaint hotline shall be posted in large print in a conspicuous and public place in the residence.

STAFFING

§ 2800.51. Criminal history checks.

Criminal history checks and hiring policies shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102), 6 Pa. Code Chapter 15 (relating to protective services for older adults).

§ 2800.52. Staff hiring, retention and utilization.

Hiring, retention and utilization of staff persons shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102), 6 Pa. Code Chapter 15 (relating to protective services for older adults) and other applicable regulations.

§ 2800.53. Qualifications and responsibilities of administrators.

(a) The administrator shall have one of the following qualifications:

(1) A license as a registered nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(2) An associate's degree or 60 credit hours from an accredited college or university in a human services field and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(3) An associate's degree or 60 credit hours from an accredited college or university in a field that is not related to human services and 2 years, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(4) A license as a licensed practical nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(5) A license as a nursing home administrator from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(b) The administrator shall be 21 years of age or older.

(c) The administrator shall be responsible for the administration and management of the residence, including the health, safety and well-being of the residents, implementation of policies and procedures and compliance with this chapter.

(d) The administrator shall have the ability to provide personal care services or to supervise or direct the work to provide personal care services.

(e) The administrator shall have knowledge of this chapter.

(f) The administrator shall have the ability to comply with applicable laws, rules and regulations, including this chapter.

(g) The administrator shall have the ability to maintain or supervise the maintenance of financial and other records.

(h) The administrator shall be free from a medical condition, including drug or alcohol addiction that would limit the administrator from performing duties with reasonable skill and safety.

§ 2800.54. Qualifications for direct care staff persons.

(a) Direct care staff persons shall have the following qualifications:

(1) Be 18 years of age or older, except as permitted in subsection (d).

(2) Have a high school diploma, GED or active registry status on the Pennsylvania nurse aide registry.

(3) Be free from a medical condition, including drug or alcohol addiction, that would limit direct care staff persons from providing necessary personal care services with reasonable skill and safety.

(b) A volunteer who performs or provides ADLs shall meet the direct staff person qualifications and training requirements specified in this chapter.

(c) A resident receiving personal care services who voluntarily performs tasks in the residence will not be considered a volunteer under this chapter.

(d) Food services or housekeeping staff may be 16 or 17 years of age.

§ 2800.55. Portability of staff qualifications and training.

A staff person who transfers to another licensed residence, or from a licensed personal care home shall be given credit for any completed hours of training that are required on an annual basis, provided however, that such staff person shall complete any additional training required by these regulations for assisted living residence direct care staff.

§ 2800.56. Administrator staffing.

(a) The administrator shall be present in the residence an average of 40 hours or more per week, in each calendar month. At least 30 hours per month shall be during normal business hours.

(b) The administrator shall designate a staff person to supervise the residence in the administrator's absence. The designee shall have the same training required for an administrator.

§ 2800.57. Direct care staffing.

(a) At all times one or more residents are present in the residence a direct care staff person who is 21 years of age or older and who serves as the designee, shall be present in the residence. The direct care staff person may be the administrator if the administrator provides direct care services.

(b) Direct care staff persons shall be available to provide at least 1 hour per day of personal care services to each mobile resident.

(c) Direct care staff persons shall be available to provide at least 2 hours per day of personal care services to each resident who has mobility needs.

(d) At least 75% of the personal care service hours specified in subsections (b) and (c) shall be available during waking hours.

§ 2800.58. Awake staff persons.

All direct care staff persons on duty in the residence shall be awake at all times.

§ 2800.59. Multiple buildings.

(a) For a residence with multiple buildings on the same premises that are within 300 feet of one another, the direct care staff person required in § 2800.57 (relating to direct care staffing) shall be on the premises and available by a two-way communication system at all times residents are present in the residence.

(b) For a residence with multiple buildings on the same premises regardless of the distance between buildings, the direct care staffing requirements in § 2800.57 apply at all times residents are present in the residence.

§ 2800.60. Additional staffing based on the needs of the residents.

(a) Staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan. All residence staff or any service providers who provide services to the residents in the residence shall meet the applicable professional licensure requirements.

(b) The staffing level in this chapter is minimum only. The Department may require additional staffing as necessary to protect the health, safety and well-being of the residents. Requirements for additional staffing will be based on the resident's assessment and support plan, the design and construction of the residence and the operation and management of the residence.

(c) Additional staff hours, or contractual hours, shall be provided as necessary to meet the transportation, laundry, food service, housekeeping and maintenance needs of the residence.

(d) In addition to the staffing requirements set forth in this chapter the residence shall have a nurse on call at all times. The on-call nurse shall be either an employee of the residence or under contract with the residence.

(e) The residence shall have a dietician on staff or under contract to provide for any special dietary needs of a resident as indicated in his support plan.

§ 2800.61. Substitute personnel.

When regularly scheduled direct care staff persons are absent, the administrator shall arrange for coverage by substitute personnel who meet the direct care staff qualifications and training requirements as specified in §§ 2800.54 and 2800.65 (relating to qualifications for direct care staff persons; and direct care staff person training and orientation).

§ 2800.62. List of staff persons.

The administrator shall maintain a current list of the names, addresses and telephone numbers of staff persons including substitute personnel and volunteers.

§ 2800.63. First aid, CPR and obstructed airway training.

(a) There shall be sufficient staff trained in first aid and certified in obstructed airway techniques and CPR present in the residence at all times to meet the needs of the residents.

(b) Current training in first aid and certification in obstructed airway techniques and CPR shall be provided by an individual certified as a trainer by a hospital or other recognized health care organization.

(c) Licensed, certified and registered medical personnel meet the qualifications in subsection (a) and are exempt from the training requirements in subsections (a) and (b).

(d) A staff person who is trained in first aid or certified in obstructed airway techniques or CPR shall provide those services in accordance with his training, unless the resident has a do not resuscitate order.

§ 2800.64. Administrator training and orientation.

(a) Prior to initial employment as an administrator, a candidate shall successfully complete the following:

(1) An orientation program approved and administered by the Department.

(2) A 100-hour standardized Department-approved administrator training course. The training provided for in § 2800.69 (relating to additional dementia-specific training) shall be in addition to the 100-hour training course.

(3) A Department-approved competency-based training test with a passing score.

(b) The standardized Department-approved administrator training course specified in subsection (a)(2) shall include the following:

(1) Fire prevention and emergency preparedness.

(2) Medication procedures, medication effects and side effects, universal precautions and personal hygiene.

(3) Certification in CPR and obstructed airway techniques and training in first aid.

(4) Personal care services.

(5) Local, State and Federal laws and regulations pertaining to the operation of a residence.

(6) Nutrition, food handling and sanitation.

(7) Recreation.

(8) Care for residents with mental illness.

(9) Resident rights.

(10) Care for residents with special needs.

(11) Care for residents with mental retardation.

(12) Community resources, social services and activities in the community.

(13) Staff supervision and staff person training including developing orientation and training guidelines for staff.

(14) Budgeting, financial recordkeeping and resident records including:

(i) Writing, completing and implementing initial assessments, annual assessments and support plans.

(ii) Resident-residence contracts.

(15) Gerontology.

(16) Abuse and neglect prevention and reporting.

(17) Cultural competency.

(18) The requirements of this chapter.

(c) An administrator shall have at least 24 hours of annual training relating to the job duties. The Department-approved administrator training course specified in subsection (a) fulfills the annual training requirement for the first year.

(d) Annual training shall be provided by Department-approved training sources listed in the Department's assisted living residence training resource directory or by an accredited college or university.

(e) An administrator who has successfully completed the training in subsections (a)-(d) shall provide written verification of successful completion to the Department's assisted living residence office.

(f) A record of training including the individual trained, date, source, content, length of each course and copies of certificates received shall be kept.

§ 2800.65. Direct care staff person training and orientation.

(a) Prior to or during the first work day, all direct care staff persons including ancillary staff persons, substitute personnel and volunteers shall have an orientation in general fire safety and emergency preparedness that includes the following:

(1) Evacuation procedures.

(2) Staff duties and responsibilities during fire drills, as well as during emergency evacuation, transportation and at an emergency location if applicable.

(3) The designated meeting place outside the building or within the fire-safe area in the event of an actual fire.

(4) Smoking safety procedures, the residence's smoking policy and location of smoking areas, if applicable.

(5) The location and use of fire extinguishers.

(6) Smoke detectors and fire alarms.

(7) Telephone use and notification of emergency services.

(b) Within 40 scheduled working hours, direct care staff persons, ancillary staff persons, substitute personnel and volunteers shall have an orientation that includes the following:

(1) Resident rights.

(2) Emergency medical plan.

(3) Mandatory reporting of abuse and neglect under the Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102).

(4) Reporting of reportable incidents and conditions.

(5) Safe management techniques.

(6) Core competency training that includes the following:

(i) Person-centered care.

- (ii) Communication, problem solving and relationship skills.
 - (iii) Nutritional support according to resident preference.
 - (c) Ancillary staff persons shall have a general orientation to their specific job functions as it relates to their position prior to working in that capacity.
 - (d) Direct care staff persons may not provide unsupervised ADL services until completion of the following:
 - (1) Training that includes a demonstration of job duties, followed by supervised practice.
 - (2) Successful completion and passing the Department-approved direct care training course and passing of the competency test.
 - (3) Initial direct care staff person training to include the following:
 - (i) Safe management techniques.
 - (ii) Assisting with ADLs and IADLs.
 - (iii) Personal hygiene
 - (iv) Care of residents with mental illness, neurological impairments, mental retardation and other mental disabilities.
 - (v) The normal aging-cognitive, psychological and functional abilities of individuals who are older.
 - (vi) Implementation of the initial assessment, annual assessment and support plan.
 - (vii) Nutrition, food handling and sanitation.
 - (viii) Recreation, socialization, community resources, social services and activities in the community.
 - (ix) Gerontology.
 - (x) Staff person supervision, if applicable.
 - (xi) Care and needs of residents with special emphasis on the residents being served in the residence.
 - (xii) Safety management and hazard prevention.
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(xiii) Universal precautions.

(xiv) The requirements of this chapter.

(xv) Infection control.

(xvi) Care for individuals with mobility needs, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration, if applicable to the residents served in the residence.

(e) Direct care staff persons shall have at least 12 hours of annual training relating to their job duties. The training required in § 2800.69 (relating to additional dementia-specific training) shall be in addition to the 12 hour annual training.

(f) Training topics for the annual training for direct care staff persons shall include the following:

(1) Medication self-administration training.

(2) Instruction on meeting the needs of the residents as described in the preadmission screening form, assessment tool, medical evaluation and support plan.

(3) Care for residents with dementia and cognitive impairments.

(4) Infection control and general principles of cleanliness and hygiene and areas associated with immobility, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.

(5) Personal care service needs of the resident.

(6) Safe management techniques.

(7) Care for residents with mental illness or mental retardation, or both, if the population is served in the residence.

(g) Direct care staff persons, ancillary staff persons, substitute personnel and regularly scheduled volunteers shall be trained annually in the following areas:

(1) Fire safety completed by a fire safety expert or by a staff person trained by a fire safety expert. Videos prepared by a fire safety expert are acceptable for the training if accompanied by an onsite staff person trained by a fire safety expert.

(2) Emergency preparedness procedures and recognition and response to crises and emergency situations.

(3) Resident rights.

(4) The Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102).

(5) Falls and accident prevention.

(6) New population groups that are being served at the residence that were not previously served, if applicable.

(h) If a staff person has completed the required initial direct care staff person training within the past year as a direct care staff person at another residence, the requirement for initial direct care staff person training in this section does not apply if the staff person provides written verification of completion of the training.

(i) A record of training including the staff person trained, date, source, content, length of each course and copies of any certificates received, shall be kept.

§ 2800.66. Staff training plan.

(a) A staff training plan shall be developed annually.

(b) The plan must include training aimed at improving the knowledge and skills of the residence's direct care staff persons in carrying out their job responsibilities. The staff training plan must include the following:

(1) The name, position and duties of each direct care staff person.

(2) The required training courses for each staff person.

(3) The dates, times and locations of the scheduled training for each staff person for the upcoming year.

(c) Documentation of compliance with the staff training plan shall be kept.

§ 2800.67. Training institution registration.

(a) An institution and the course of study offered by an educational institution, association, professional society or organization for the purpose of educating and qualifying applicants for certification as assisted living residence administrators shall be registered and approved by the Department prior to offering the course of study.

(b) An application for registration of an institution and approval of a course of study shall be submitted to the Department on a form provided by the Department and include the following information:

(1) The full name, address, telephone number, facsimile number and electronic mail address of the prospective training provider, each instructor and the program coordinator.

(2) The training objectives, instructional materials, content and teaching methods to be used and the number of clock hours.

(3) The recommended class size.

(4) The attendance certification method.

(5) Proof that each course instructor is certified by the Department to conduct administrator training.

(6) The subject that each instructor will teach and documentation of the instructor's academic credentials, instructional experience and work experience to teach the subject.

(7) The location of the training site, which shall accommodate the number of anticipated participants.

(c) A request to amend a Department-approved course of study shall be submitted for the Department's review and approval prior to implementation of a change in the course of study.

(d) The training institution shall issue a training certificate to each participant who successfully completes the Department-approved course and passes the competency test. Each training certificate must indicate the participant's name, the name of the training institution, the date and location of the training and the number of clock hours completed for each training topic.

§ 2800.68. Instructor approval.

(a) Training for assisted living residence administrators provided by an individual who is not certified as an instructor by the Department will not be considered valid training.

(b) To receive the Department's certification as an approved instructor for assisted living residence administrators, an instructor shall successfully complete the Department's train-the-trainer course. The train-the-trainer course is designed to provide and reinforce basic training skills, including the roles and

responsibilities of the trainer, training methodology, the use of instructional aids and recordkeeping.

(c) An instructor shall demonstrate competent instructional skills and knowledge of the applicable topic and meet the Department's qualifications for the topic being taught.

(d) An instructor is subject to unannounced monitoring by the Department while conducting training.

(e) The Department will establish approval standards that include the following:

(1) The mechanism to measure the quality of the training being offered.

(2) The criteria for selecting and evaluating instructors, subject matter and instructional materials.

(3) The criteria for evaluating requests to amend a course.

(4) The criteria for evaluating the effectiveness of each course.

(5) The instructor qualifications for each subject being taught.

(f) The Department may withdraw approval under the following conditions:

(1) Failure to follow the approved curriculum.

(2) Lack of trainer competency.

(3) A pattern of violations of this chapter by a residence conducting the training.

§ 2800.69. Additional dementia-specific training.

Administrative staff, direct care staff persons, ancillary staff persons, substitute personnel and volunteers shall receive at least 4 hours of dementia-specific training within 30 days of hire and at least 2 hours of dementia-specific training annually thereafter in addition to the training requirements of this chapter.

PHYSICAL SITE

§ 2800.81. Physical accommodations and equipment.

(a) The residence shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a resident with a

disability and to allow safe movement within the residence and exiting from the residence.

(b) Wheelchairs, walkers, prosthetic devices and other apparatus used by residents must be clean, in good repair and free of hazards.

§ 2800.82. Poisons.

(a) Poisonous materials shall be stored in their original, labeled containers.

(b) Poisonous materials shall be stored separately from food, food preparation surfaces and dining surfaces.

(c) Poisonous materials shall be kept locked and inaccessible to residents unless all of the residents living in the residence are able to safely use or avoid poisonous materials.

§ 2800.83. Temperature.

(a) The indoor temperature, in areas used by the residents, must be at least 70°F when residents are present in the residence.

(b) A residence in existence prior to _____ (Ed. note: effective date) shall provide central air conditioning. If central air conditioning is not feasible or is cost prohibitive window air conditioning units shall be provided. The residence shall submit justification to the Department for the use of window air conditioning units.

(c) For new construction after _____ (Ed. note: effective date), the residence shall provide central air conditioning.

§ 2800.84. Heat sources.

Heat sources, such as steam and hot heating pipes, water pipes, fixed space heaters, hot water heaters and radiators exceeding 120°F that are accessible to the resident must be equipped with protective guards or insulation to prevent the resident from coming in contact with the heat source.

§ 2800.85. Sanitation.

(a) Sanitary conditions shall be maintained.

(b) There may be no evidence of infestation of insects or rodents in the residence.

(c) Trash shall be removed from the premises at least once a week.

(d) Trash in kitchens and bathrooms shall be kept in covered trash receptacles that prevent the penetration of insects and rodents.

(e) Trash outside the residence shall be kept in covered receptacles that prevent the penetration of insects and rodents.

(f) For a residence serving 9 or more residents that is not connected to a public sewer system there shall be a written sanitation approval for its sewage system by the sewage enforcement official of the municipality in which the residence is located.

§ 2800.86. Ventilation.

(a) All areas of the residence that are used by the resident shall be ventilated. Ventilation includes an operable window, air conditioner, fan or mechanical ventilation that ensures airflow.

(b) A bathroom that does not have an operable, outside window shall be equipped with an exhaust fan for ventilation.

§ 2800.87. Lighting.

The residence's rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, evacuation routes, outside walkways and fire escapes shall be lighted and marked to ensure that residents, including those with vision impairments, can safely move through the residence and safely evacuate.

§ 2800.88. Surfaces.

(a) Floors, walls, ceilings, windows, doors and other surfaces must be clean, in good repair and free of hazards.

(b) The residence may not use asbestos products for renovations or new construction.

§ 2800.89. Water.

(a) The residence must have hot and cold water under pressure in each bathroom, kitchen and laundry area to accommodate the needs of the residents in the residence.

(b) Hot water temperature in areas accessible to the resident may not exceed 120°F.

(c) A residence that is not connected to a public water system shall have a coliform water test at least every 3 months, by a Department of Environmental Protection-certified laboratory, stating that the water is below maximum contaminant levels. A public water system is a system that provides water to the public for human consumption, which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

(d) If the water is found to be above maximum contaminant levels, the residence shall conduct remediation activity to reduce the level of contaminants to below the maximum contaminant level. During remediation activity, an alternate source of drinking water shall be provided to the residents.

(e) The residence shall keep documentation of the laboratory certification, in addition to the results and corrections made to ensure safe water for drinking.

§ 2800.90. Communication system.

(a) The residence shall have a working, noncoin operated, landline telephone that is accessible in emergencies and accessible to individuals with disabilities.

(b) For a residence serving 9 or more residents, there shall be a system or method of communication that enables staff persons to immediately contact other staff persons in the residence for assistance in an emergency.

§ 2800.91. Emergency telephone numbers.

Telephone numbers for the nearest hospital, police department, fire department, ambulance, poison control, local emergency management and assisted living residence complaint hotline shall be posted on or by each telephone with an outside line.

§ 2800.92. Windows and screens.

Windows, including windows in doors, must be in good repair and securely screened when doors or windows are open.

§ 2800.93. Handrails and railings.

(a) Each ramp, interior stairway, hallway and outside steps must have a well-secured handrail.

(b) Each porch must have a well-secured railing.

§ 2800.94. Landings and stairs.

(a) Interior and exterior doors that open directly into a stairway and are used for exit doors, resident areas and fire exits must have a landing, which is a minimum of 3 feet by 3 feet.

(b) Interior stairs, exterior steps and ramps must have nonskid surfaces.

(c) All stairs shall have strips for those with vision impairments.

§ 2800.95. Furniture and equipment.

Furniture and equipment must be in good repair, clean and free of hazards.

§ 2800.96. First aid kit.

(a) The residence shall have a first aid kit that includes an automatic electronic defibrillation device, nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, adhesive tape, scissors, breathing shield, eye coverings and tweezers.

(b) Staff persons shall know the location of the first aid kit.

(c) The first aid kit must be in a location that is easily accessible to staff persons.

§ 2800.97. Elevators and stair glides.

Each elevator and stair glide must have a certificate of operation from the Department of Labor and Industry or the appropriate local building authority in accordance with 34 Pa. Code Chapter 405 (relating to elevators and other lifting devices)

§ 2800.98. Indoor activity space.

(a) The residence shall have at least two indoor wheelchair accessible common rooms for all residents for activities such as reading, recreation and group activities. One of the common rooms shall be available for resident use at any time, provided such use does not affect or disturb others.

(b) The residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. There must be at least 15 square feet per living unit for up to fifty living units. There must be a total of 750 square feet if there are more than 50 living units. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors.

(c) The residence shall have a working television and radio available to residents in a living room or lounge area.

§ 2800.99. Recreation space.

The residence shall provide regular access to outdoor and indoor recreation space and recreational items, such as books, newspapers, magazines, puzzles, games, cards and crafts.

§ 2800.100. Exterior conditions.

(a) The exterior of the building and the building grounds or yard must be in good repair and free of hazards.

(b) The residence shall ensure that ice, snow and obstructions are removed from outside walkways, ramps, steps, recreational areas and exterior fire escapes.

§ 2800.101. Resident living units.

(a) Residences must provide a resident with the resident's own living unit unless the conditions of subsection (c) are met.

(b)(1) For new construction of residences after _____ (Ed. note: effective date), each living unit for a single resident must have at least 250 square feet of floor space measured wall-to-wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.

(2) For residences in existence prior to _____ (Ed. note: effective date), each living unit must have at least 175 square feet measured wall to wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.

(3) Each living unit must have a telephone jack and individually controlled thermostats for heating and cooling.

(4) All doors in living units including entrance doors, shall be accessible or adaptable for wheelchair use.

(c) Two residents may voluntarily agree to share one living unit provided that the agreement is in writing and contained in each of the resident-residence contract of those residents. A licensee shall not require residents to share a living unit. The maximum number of residents in any living unit shall be two residents.

(d) Kitchen capacity.

(1) New construction. For new construction of residences after _____ (Ed. note: effective date), the kitchen capacity, at a minimum, shall contain a small refrigerator with a freezer compartment, a cabinet for food storage, a small bar-type sink with hot and cold running water and space with electrical outlets suitable for small cooking appliances such as a microwave oven. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident chooses not to have cooking capability in his living unit.

(2) Existing facilities. Facilities that convert to residences after _____ (Ed. note: effective date) must meet the following requirements related to kitchen capacity:

(i) The residence shall provide a small refrigerator in each living unit.

(ii) The residence shall provide a microwave oven in each living unit.

(iii) The residence shall provide access to a sink for dishes, a stovetop for hot food preparation and a food preparation area in a common area. A common resident kitchen shall not include the kitchen used by the residence staff for the preparation of resident or employee meals, or the storage of goods.

(e) Ceiling height in each living unit must be an average of at least 7 feet.

(f) Each living unit must have at least one window with direct exposure to natural light.

(g) A resident's bedroom in the living unit shall be used only by the occupying resident unless two consenting adult residents agree to share a bedroom and the requirements of subsection (c) are met.

(h) Each living unit shall have a door with a lock, except where a lock in a unit under a special care designation would pose a risk or be unsafe.

(i) A resident shall have access to his living unit at all times.

(j) Each resident shall have the following in the living unit:

(1) A bed with a solid foundation and fire retardant mattress that is in good repair, clean and supports the resident.

(2) A chair for each resident that meets the resident's needs.

(3) Pillows, bed linens and blankets that are clean and in good repair.

(4) A storage area for clothing that includes a chest of drawers and a closet or wardrobe space with clothing racks or shelves accessible to the resident.

(5) A bedside table or a shelf.

(6) A mirror.

(7) An operable lamp or other source of lighting that can be turned on at bedside.

(8) If a resident shares a bedroom with another resident, the items specified in paragraphs (4)-(7) may be shared with one other resident.

(k) Cots and portable beds are prohibited.

(l) Bunk beds or other raised beds that require residents to climb steps or ladders to get into or out of bed are prohibited.

(m) A living unit may not be used as an exit from or used as a passageway to another part of the residence unless in an emergency situation.

(n) The living unit must have walls, floors and ceilings, which are finished, clean and in good repair.

(o) In living units with a separate bedroom there must be a door on the bedroom.

(p) Space for storage of personal property shall be provided in a dry, protected area.

(q) There must be drapes, shades, curtains, blinds or shutters on the living unit windows. Window coverings must be clean, in good repair, provide privacy and cover the entire window when drawn.

(r) Each living unit shall be equipped with an emergency notification system to notify staff in the event of an emergency.

§ 2800.102. Bathrooms.

(a) There shall be one functioning flush toilet in the bathroom in the living unit.

(b) There shall be at least one sink and wall mirror in the bathroom of the living unit.

(c) There shall be at least one bathtub or shower in the bathroom of the living unit.

- (d) Toilet and bath areas in the living unit must have grab bars, hand rails or assist bars. Bathtubs and showers must have slip-resistant surfaces.
- (e) Privacy in the living unit shall be provided for toilets, showers and bathtubs by partitions or doors.
- (f) An individual towel, washcloth and soap shall be provided for each resident unless the resident provides his own supplies of these items.
- (g) Individual toiletry items including toothpaste, toothbrush, shampoo, deodorant, comb and hairbrush shall be made available to residents who are not recipients of SSI. If the residence charges for these items, the charges shall be indicated in the resident-residence contract. Availability of toiletry items for residents who are recipients of SSI is specified in § 2800.27(d)(1) (relating to SSI recipients).
- (h) Toilet paper shall be provided for every toilet.
- (i) A dispenser with soap shall be provided within reach of each bathroom sink. Bar soap is not permitted unless there is a separate bar clearly labeled for each resident who shares a bathroom.
- (j) Towels and washcloths shall be in the possession of the resident in the resident's living unit unless the resident has access to the residence's linen supply.
- (k) Use of a common towel is prohibited.
- (l) Shelves or hooks for the resident's towel and clothing shall be provided.
- (m) A residence shall have at least one public restroom that meets applicable local, state and federal laws and guidelines and that is convenient to common areas and wheelchair accessible.
- (n) Each bathroom shall be equipped with an emergency notification system to notify staff in the event of an emergency.

§ 2800.103. Food service.

- (a) A residence shall have access on the grounds to an operable kitchen with a refrigerator, sink, stove, oven, cooking equipment and cabinets or shelves for storage. If the kitchen is not in the residence, the residence shall have a kitchen area with a refrigerator, cooking equipment, a sink and food storage space.
 - (b) Kitchen surfaces must be of a nonporous material and cleaned and sanitized after each meal.
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- (c) Food shall be protected from contamination while being stored, prepared, transported and served.
- (d) Food shall be stored off the floor.
- (e) Food served and returned from an individual's plate may not be served again or used in the preparation of other dishes. Leftover food shall be labeled and dated.
- (f) Food requiring refrigeration shall be stored at or below 40°F. Frozen food shall be kept at or below 0°F. Thermometers are required in refrigerators and freezers.
- (g) Food shall be stored in closed or sealed containers.
- (h) Food shall be thawed either in the refrigerator, microwave oven, under cool water or as part of the cooking process.
- (i) Outdated or spoiled food or dented cans may not be used.
- (j) Eating, drinking and cooking utensils shall be washed, rinsed and sanitized after each use by a method specified in 7 Pa. Code Chapter 46, Subchapter D (relating to equipment, utensils and linen).

§ 2800.104. Dining room.

- (a) An assisted living residence shall have an accessible common dining space outside the resident living units. A dining room area shall be equipped with tables and chairs and able to accommodate the maximum number of residents scheduled for meals at any one time. There must be at least 15 square feet per person for residents scheduled for meals at any one time.
- (b) Dishes, glassware and utensils shall be provided for eating, drinking, preparing and serving food. These utensils must be clean, and free of chips and cracks. Plastic and paper plates, utensils and cups for meals may not be used on a regular basis.
- (c) Condiments shall be available at the dining table.
- (d) Adaptive eating equipment or utensils shall be available, if needed, to assist residents in eating at the table.
- (e) Breakfast, midday and evening meals shall be served to residents in a dining room except in the following situations:

(1) Service in the resident's living unit shall be available at no additional charge when the resident is unable to come to the dining room due to illness.

(2) When room service is available in a residence, a resident may choose to have a meal served in the resident's living unit. This service shall be provided at the resident's request and may not replace daily meals in a dining room.

§ 2800.105. Laundry.

(a) Laundry service for bed linens, towels and personal clothing shall be provided by the residence, at no additional charge, to residents who are recipients of or eligible applicants for SSI benefits. Laundry service does not include dry cleaning.

(b) Laundry service for bed linens, towels and personal clothing for the residents who are not recipients of SSI shall be provided by the residence unless otherwise indicated in the resident-residence contract.

(c) The supply of bed linens and towels shall be sufficient to ensure a complete change of bed linen and towels at least once per week.

(d) Bed linens and towels shall be changed at least once every week and more often as needed to maintain sanitary conditions.

(e) Clean linens and towels shall be stored in an area separate from soiled linen and clothing.

(f) Measures shall be implemented to ensure that residents' clothing are not lost or misplaced during laundering or cleaning. The resident's clean clothing shall be returned to the resident within 24 hours after laundering.

(g) To reduce the risks of fire hazards, lint shall be removed from the lint trap and drum of clothes dryers after each use. Lint shall be cleaned from the vent duct and internal and external ductwork of clothes dryers according to the manufacturer's instructions.

§ 2800.106. Swimming areas.

If a residence operates a swimming area, the following requirements apply:

(1) Swimming areas shall be operated in accordance with applicable laws and regulations.

(2) Written policy and procedures to protect the health, safety and well-being of the residents shall be developed and implemented.

§ 2800.107. Emergency preparedness.

- (a) The administrator shall have a copy and be familiar with the emergency preparedness plan for the municipality in which the residence is located.
- (b) The residence shall have written emergency procedures that include the following:
 - (1) Contact information for each resident's designated person.
 - (2) The residence's plan to provide the emergency medical information for each resident that ensures confidentiality.
 - (3) Contact telephone numbers of local and State emergency management agencies and local resources for housing and emergency care of residents.
 - (4) Means of transportation in the event that relocation is required.
 - (5) Duties and responsibilities of staff persons during evacuation, transportation and at the emergency location. These duties and responsibilities shall be specific to each resident's emergency needs.
 - (6) Alternate means of meeting resident needs in the event of a utility outage.
- (c) The residence shall maintain at least a 3-day supply of nonperishable food and drinking water for residents.
- (d) The written emergency procedures shall be reviewed, updated and submitted annually to the local emergency management agency.

§ 2800.108. Firearms and weapons.

- (a) A residence shall have a written policy regarding firearms.
- (b) The policy shall include, at a minimum, procedures regarding the safety, access and use of firearms, weapons and ammunition.
- (c) Firearms, weapons and ammunition shall be permitted on the licensed premises of a residence only when the following conditions are met:
 - (1) Firearms and weapons shall be contained in a locked cabinet located in a place other than the residents' living unit or in a common living area.
 - (2) Ammunition shall be contained in a locked area separate from firearms and weapons, and located in a place other than the residents' living unit or in a common living area.

(3) The key to the locked cabinet containing the firearms, weapons and ammunition shall be in the possession of the administrator or a designee.

(4) The administrator or designee shall be the only individual permitted to open the locked cabinet containing the firearms and weapons and the locked area containing the ammunition.

(d) If a firearm, weapon or ammunition is the property of a resident, there shall be a written policy and procedures regarding the safety, access and use of firearms, weapons and ammunition. A resident may not take a firearm, weapon or ammunition out of the locked cabinet into the living area.

§ 2800.109. Pets.

(a) The residence rules shall specify whether the residence permits pets on the premises.

(b) Cats and dogs present at the residence shall have a current rabies vaccination. A current certificate of rabies vaccination from a licensed veterinarian shall be kept.

(c) Pets that are accessible to the residents shall be in good health and nonaggressive to the residents.

(d) If a residence has additional charges for pets, the charges shall be included in the resident-residence contract.

(e) A residence shall disclose to applicants whether pets are permitted and present in the residence.

FIRE SAFETY

§ 2800.121. Unobstructed egress.

(a) Stairways, hallways, doorways, passageways and egress routes from living units and from the building must be unlocked and unobstructed.

(b) Except as provided in § 2800.101 (relating to resident living units), doors used for egress routes from living units and from the building may not be equipped with key-locking devices, electronic card operated systems or other devices which prevent immediate egress of residents from the building, unless the residence has written approval or a variance from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.

§ 2800.122. Exits.

Unless otherwise regulated by the Department of Labor and Industry, the Department of Health or the appropriate local building authority, all buildings must have at least two independent and accessible exits from every floor, arranged to reduce the possibility that both will be blocked in an emergency situation.

§ 2800.123. Emergency evacuation.

(a) Exit doors must be equipped so that they can be easily opened by residents from the inside without the use of a key or other manual device that can be removed, misplaced or lost.

(b) Copies of the emergency procedures as specified in § 2800.107 (relating to emergency preparedness) shall be posted in a conspicuous and public place in the residence and a copy shall be kept.

(c) For a residence serving nine or more residents, an emergency evacuation diagram of each floor showing corridors, line of travel to exit doors and location of the fire extinguishers and pull signals shall be posted in a conspicuous and public place on each floor.

(d) If the residence serves one or more residents with mobility needs above or below grade level of the residence, there shall be a fire-safe area, as specified in writing within the past year by a fire safety expert, on the same floor as each resident with mobility needs.

§ 2800.124. Notification of local fire officials.

The residence shall notify the local fire department in writing of the address of the residence, location of the living units and bedrooms and the assistance needed to evacuate in an emergency. Documentation of notification shall be kept.

§ 2800.125. Flammable and combustible materials.

(a) Combustible and flammable materials may not be located near heat sources or hot water heaters.

(b) Combustible materials shall be inaccessible to residents.

§ 2800.126. Furnaces.

(a) A professional furnace cleaning company or trained maintenance staff person shall inspect furnaces at least annually. Documentation of the inspection shall be kept.

(b) Furnaces shall be cleaned according to the manufacturer's instructions. Documentation of the cleaning shall be kept.

§ 2800.127. Space heaters.

(a) Portable space heaters are prohibited.

(b) Nonportable space heaters must be well vented and installed with permanent connections and protectors.

§ 2800.128. Supplemental heating sources.

(a) The use of kerosene burning heaters is prohibited.

(b) Wood and coal burning stoves shall be used only if a local fire department or other municipal fire safety authority, professional cleaning company or trained maintenance staff person inspects and approves them annually. Wood and coal burning stoves that are used as a regular heating source shall be cleaned every year according to the manufacturer's instructions. Documentation of wood and coal burning stove inspections and cleanings shall be kept.

(c) Wood and coal burning stoves must be securely screened or equipped with protective guards while in use.

§ 2800.129. Fireplaces.

(a) A fireplace must be securely screened or equipped with protective guards while in use.

(b) A fireplace chimney and flue shall be cleaned when there is an accumulation of creosote. Written documentation of the cleaning shall be kept.

§ 2800.130. Smoke detectors and fire alarms.

(a) There shall be an operable automatic smoke detector located in each living unit.

(b) Smoke detectors and fire alarms must be of a type approved by the Department of Labor and Industry, the appropriate local building authority or local fire safety expert, or listed by Underwriters Laboratories.

(c) If the residence serves nine or more residents, there shall be at least one smoke detector on each floor interconnected and audible throughout the residence or an automatic fire alarm system that is interconnected and audible throughout the residence.

(d) If one or more residents or staff persons are not able to hear the smoke detector or fire alarm system, a signaling device approved by a fire safety expert shall be used and tested so that each resident and staff person with a hearing impairment will be alerted in the event of a fire.

(e) Smoke detectors and fire alarms shall be tested for operability at least once per month. A written record of the monthly testing shall be kept.

(f) If a smoke detector or fire alarm becomes inoperative, repair shall be completed within 48 hours of the time the detector or alarm was found to be inoperative.

(g) The residence's emergency procedures shall indicate the procedures that will be immediately implemented until the smoke detector or fire alarms are operable.

(h) In residences housing five or more residents with mobility needs, the fire alarm system shall be directly connected to the local fire department or 24-hour monitoring service approved by the local fire department, if this service is available in the community.

§ 2800.131. Fire extinguishers.

(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor and living unit, including the basement and attic.

(b) If the indoor floor area on a floor including the basement or attic is more than 3,000 square feet, there shall be an additional fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen and in the living units. The kitchen extinguisher must meet the requirements for one floor as required in subsection (a).

(d) Fire extinguishers must be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(e) Fire extinguishers shall be accessible to staff persons. Fire extinguishers shall be kept locked if access to the extinguisher by a resident could cause a safety risk to the resident. If fire extinguishers are kept locked, each staff person shall be able to immediately unlock the fire extinguisher in the event of a fire emergency.

(f) Fire extinguishers shall be inspected and approved annually by a fire safety expert. The date of the inspection shall be on the extinguisher.

§ 2800.132. Fire drills.

(a) An unannounced fire drill shall be held at least once a month.

(b) A fire safety inspection and fire drill conducted by a fire safety expert shall be completed annually. Documentation of this fire drill and fire safety inspection shall be kept.

(c) A written fire drill record must include the date, time, the amount of time it took for evacuation, the exit route used, the number of residents in the residence at the time of the drill, the number of residents evacuated, the number of staff persons participating, problems encountered and whether the fire alarm or smoke detector was operative.

(d) Residents shall be able to evacuate the entire building to a public thoroughfare, or to a fire-safe area designated in writing within the past year by a fire safety expert within the period of time specified in writing within the past year by a fire safety expert. For purposes of this subsection, the fire safety expert may not be a staff person of the residence.

(e) A fire drill shall be held during sleeping hours once every 6 months.

(f) Alternate exit routes shall be used during fire drills.

(g) Fire drills shall be held on different days of the week, at different times of the day and night, not routinely held when additional staff persons are present and not routinely held at times when resident attendance is low.

(h) Residents shall evacuate to a designated meeting place away from the building or within the fire-safe area during each fire drill.

(i) A fire alarm or smoke detector shall be set off during each fire drill.

(j) Elevators may not be used during a fire drill or a fire.

§ 2800.133. Exit signs.

The following requirements apply for a residence serving nine or more residents:

(1) Signs bearing the word "EXIT" in plain legible letters shall be placed at all exits.

(2) Access to exits shall be marked with readily visible signs indicating the direction to travel.

(3) Exit sign letters must be at least 6 inches in height with the principal strokes of letters at least 3/4 inch wide.

RESIDENT HEALTH

§ 2800.141. Resident medical evaluation and health care.

(a) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner documented on a form specified by the Department, within 60 days prior to admission. The evaluation must include the following:

- (1) A general physical examination by a physician, physician's assistant or nurse practitioner.
 - (2) Medical diagnosis including physical or mental disabilities of the resident, if any.
 - (3) Medical information pertinent to diagnosis and treatment in case of an emergency.
 - (4) Special health or dietary needs of the resident.
 - (5) Allergies.
 - (6) Immunization history.
 - (7) Medication regimen, contraindicated medications, medication side effects and the ability to self-administer medications.
 - (8) Body positioning and movement stimulation for residents, if appropriate.
 - (9) Health status.
 - (10) Mobility assessment, updated annually or at the Department's request.
 - (11) An indication that a tuberculin skin test has been administered with negative results within 2 years; or if the tuberculin skin test is positive, the result of a chest X-ray. In the event a tuberculin skin test has not been administered, such test shall be administered within 15 days after admission.
 - (12) Information about a resident's day-to-day personal care needs.
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- (b) A resident shall have a medical evaluation:

(1) At least annually.

(2) If the medical condition of the resident changes prior to the annual medical evaluation.

§ 2800.142. Assistance with health care and supplemental health care services.

(a) The residence shall assist the resident to secure medical care and supplemental health care services. To the extent prominently displayed in the written admission agreement, a residence may require residents to use providers of supplemental health care services approved or designated by the residence. If the resident has health care coverage for the supplemental health care services, such approval shall not be unreasonably withheld. The residence shall document the resident's need for the medical care, including updating the resident's assessment and support plan.

(b) If a resident refuses routine medical or dental examination or treatment, the refusal and the continued attempts to educate and inform the resident about the need for health care shall be documented in the resident's record.

(c) If a resident has a serious medical or dental condition, reasonable efforts shall be made to obtain consent for treatment from the resident or the resident's designated person.

(d) The residence shall assist the resident to secure preventative medical, dental, vision and behavioral health care as requested by a physician, physician's assistant or certified registered nurse practitioner.

§ 2800.143. Emergency medical plan.

(a) The residence shall have a written emergency medical plan that includes the following:

(1) The hospital or source of health care that will be used in an emergency. This shall be the resident's choice, if possible.

(2) Emergency transportation to be used.

(3) An emergency staffing plan.

(b) The following current emergency medical and health information shall be available at all times for each resident and shall accompany the resident when the resident needs emergency medical attention:

- (1) The resident's name and birth date.
- (2) The resident's Social Security number.
- (3) The resident's medical diagnosis.
- (4) The resident's physician's name and telephone number.
- (5) Current medication, including the dosage and frequency.
- (6) A list of allergies.
- (7) Other relevant medical conditions.
- (8) Insurance or third party payer and identification number.
- (9) The power of attorney for health care or health care proxy, if applicable.
- (10) The resident's designated person with current address and telephone number.
- (11) Personal information and related instructions regarding advance directives, do not resuscitate orders or organ donation, if applicable.

§ 2800.144. Use of tobacco.

- (a) A residence may permit smoking tobacco in a designated smoking room of the residence.
- (b) The residence rules shall specify whether the residence is designated as smoking or nonsmoking.
- (c) A residence that permits smoking inside or outside of the residence shall develop and implement written fire safety policy and procedures that include the following:
 - (1) Proper safeguards inside and outside of the residence to prevent fire hazards involved in smoking, including providing fireproof receptacles and ashtrays, direct outside ventilation, no interior ventilation from the smoking room through other parts of the residence, extinguishing procedures, fire resistant furniture both inside and outside the residence and fire extinguishers in the smoking rooms.
 - (2) Location of a smoking room or outside smoking area a safe distance from heat sources, hot water heaters, combustible or flammable materials and away from common walkways and exits.

- (3) Prohibition of the use of tobacco during transportation by the residence.
- (d) Smoking outside of the smoking room is prohibited.

NUTRITION

§ 2800.161. Nutritional adequacy.

- (a) Meals shall be offered that meet the recommended dietary allowances established by the United States Department of Agriculture.
- (b) At least three nutritionally well-balanced meals shall be offered daily to the resident. Each meal shall include an alternative food and drink item from which the resident may choose.
- (c) Additional portions of meals and beverages at mealtimes shall be available for the resident.
- (d) A resident's special dietary needs as prescribed by a physician, physician's assistant, certified registered nurse practitioner or dietitian shall be met. Documentation of the resident's special dietary needs shall be kept in the resident's record.
- (e) Dietary alternatives shall be available for a resident who has special health needs or religious beliefs regarding dietary restrictions.
- (f) Drinking water shall be available to the resident at all times.
- (g) Between-meal snacks and beverages shall be available at all times for each resident, unless medically contraindicated as documented in the resident's support plan.
- (h) Residents have the right to purchase groceries and prepare their own food in addition to the three meal plan required in § 2800.220(b) (Relating to assisted living residence services) in their living units unless it would be unsafe for them to do so consistent with their support plan.

§ 2800.162. Meals.

- (a) There may not be more than 15 hours between the evening meal and the first meal of the next day. There may not be more than 6 hours between breakfast and lunch, and between lunch and supper. This requirement does not apply if a resident's physician has prescribed otherwise.
- (b) When a resident misses a meal, food adequate to meet daily nutritional requirements shall be available and offered to the resident.

(c) Menus, stating the specific food being served at each meal, shall be prepared for 1 week in advance and shall be followed. Weekly menus shall be posted 1 week in advance in a conspicuous and public place in the residence.

(d) Past menus of meals that were served, including changes, shall be kept for at least 1 month.

(e) A change to a menu shall be posted in a conspicuous and public place in the residence and shall be accessible to a resident in advance of the meal. Meal substitutions shall be made in accordance with § 2800.161 (relating to nutritional adequacy).

(f) A resident shall receive adequate physical assistance with eating or be provided with appropriate adaptive devices, or both, as indicated in the resident's support plan.

(g) All appropriate cueing shall be used to encourage and remind residents to eat and drink.

§ 2800.163. Personal hygiene for food service workers.

(a) Staff persons, volunteers and residents involved in the storage, preparation, serving and distributing of food shall wash their hands with hot water and soap prior to working in the kitchen areas and after using the bathroom.

(b) Staff persons, volunteers and residents shall follow sanitary practices while working in the kitchen areas.

(c) Staff persons, volunteers and residents involved with the storage, preparation, serving and distributing of food shall be in good health.

(d) Staff persons, volunteers and residents who have a discharging or infected wound, sore, lesion on hands, arms or any exposed portion of their body may not work in the kitchen areas in any capacity.

§ 2800.164. Withholding or forcing of food prohibited.

(a) A residence may not withhold meals, beverages, snacks or desserts as punishment. Food and beverages may be withheld in accordance with prescribed medical or dental procedures.

(b) A resident may not be forced to eat food.

(c) If a resident refuses to eat or drink continuously during a 24-hour period, the resident's primary care physician and the resident's designated person shall be immediately notified.

(d) If a resident has a cognitive impairment that affects the resident's ability to consume adequate amounts of food and water, a staff person shall encourage and remind the resident to eat and drink.

TRANSPORTATION

§ 2800.171. Transportation.

(a) A residence shall be required to provide or coordinate transportation to and from medical and social appointments.

(b) The following requirements apply whenever staff persons or volunteers of the residence provide transportation for the resident:

(1) The occupants of the vehicle shall be in an appropriate safety restraint at all times the vehicle is in motion.

(2) The driver of a vehicle shall be 18 years of age or older and possess a valid driver's license.

(3) The driver of the residence vehicle cannot be a resident.

(4) At least one staff member transporting or accompanying the residents shall have completed the initial new hire direct care staff person training as specified in § 2800.65 (relating to direct care staff training and orientation).

(5) The vehicle must have a first aid kit with the contents as specified in § 2800.96 (relating to first aid kit).

(6) During vehicle operations, the driver may only use a hands-free cellular telephone.

(7) Transportation shall include, when necessary, an assistant to the driver who assists the driver to escort residents in and out of the residence and provides assistance during the trip.

(c) The residence shall maintain current copies of the following documentation for each of the residence's vehicles used to transport residents:

(1) Vehicle registration.

(2) Valid driver's license for vehicle operator.

(3) Vehicle insurance.

(4) Current inspection.

(5) Commercial driver's license for vehicle operator if applicable.

(d) If a residence supplies its own vehicle for transporting residents to and from medical and social appointments, any vehicle used for this purpose shall be accessible to resident wheelchair users and any other assistive equipment the resident may need.

MEDICATIONS

§ 2800.181. Self-administration.

(a) A residence shall provide residents with assistance, as needed, with medication prescribed for the resident's self-administration. This assistance includes helping the resident to remember the schedule for taking the medication, storing the medication in a secure place and offering the resident the medication at the prescribed times.

(b) If assistance includes helping the resident to remember the schedule for taking the medication, the resident shall be reminded of the prescribed schedule.

(c) The resident's assessment shall identify if the resident is able to self-administer medications as specified in § 2800.227(e) (relating to development of the support plan). A resident who desires to self-administer medications shall be assessed by a physician, physician's assistant or certified registered nurse practitioner regarding the ability to self-administer and the need for medication reminders.

(d) If the resident does not need assistance with medication, medication may be stored in a resident's living unit for self-administration. Medications stored in the resident's living unit shall be kept in a safe and secure location to protect against contamination, spillage and theft. The residence shall provide a lockable storage unit for this purpose.

(e) To be considered capable to self-administer medications, a resident shall:

(1) Be able to recognize and distinguish his medication.

(2) Know how much medication is to be taken.

(3) Know when medication is to be taken.

(f) The resident's record shall include a current list of prescription, CAM and OTC medications for each resident who is self-administering his medication.

§ 2800.182. Medication administration.

(a) A residence shall provide medication administration services for a resident who is assessed to need medication administration services in accordance with § 2800.181 (relating to self-administration) and for a resident who chooses not to self-administer medications.

(b) Prescription medication that is not self-administered by a resident shall be administered by one of the following:

(1) A physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.

(2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the residence.

(3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the residence.

(4) A staff person who has completed the medication administration training as specified in § 2800.190 (relating to medication administration training) for the administration of oral; topical; eye, nose and ear drop prescription medications; insulin injections and epinephrine injections for insect bites or other allergies.

(c) Medication administration includes the following activities, based on the needs of the resident:

(1) Identify the correct resident.

(2) If indicated by the prescriber's orders, measure vital signs and administer medications accordingly.

(3) Remove the medication from the original container.

(4) Crush or split the medication as ordered by the prescriber.

(5) Place the medication in a medication cup or other appropriate container, or in the resident's hand.

(6) Place the medication in the resident's hand, mouth or other route as ordered by the prescriber, in accordance with the limitations specified in subsection (b)(4).

(7) Complete documentation in accordance with § 2800.187 (relating to medication records).

§ 2800.183. Storage and disposal of medications and medical supplies. . . .

- (a) Prescription medications, OTC medications and CAM shall be kept in their original labeled containers and may not be removed more than 2 hours in advance of the scheduled administration. Assistance with insulin and epinephrine injections and sterile liquids shall be provided immediately upon removal of the medication from its container.
- (b) Prescription medications, OTC medications, CAM and syringes shall be kept in an area or container that is locked. This includes medications and syringes unless kept in the resident's living unit.
- (c) Prescription medications, OTC medications and CAM stored in a refrigerator shall be kept in an area or container that is locked unless the resident has the capacity to store such medications in the resident's own refrigerator in the resident's living unit.
- (d) Only current prescription, OTC, sample and CAM for individuals living in the residence may be kept in the residence.
- (e) Prescription medications, OTC medications and CAM shall be stored in an organized manner under proper conditions of sanitation, temperature, moisture and light and in accordance with the manufacturer's instructions.
- (f) Prescription medications, OTC medications and CAM that are discontinued, expired or for residents who are no longer served at the residence shall be destroyed in a safe manner according to the Department of Environmental Protection and Federal and State regulations. When a resident permanently leaves the residence, the resident's medications shall be given to the resident, the designated person, if any, or the person or entity taking responsibility for the new placement on the day of departure from the residence.
- (g) Subsections (a) and (e) do not apply to a resident who self-administers medication and stores the medication in his living unit.

§ 2800.184. Labeling of medications.

- (a) The original container for prescription medications shall be labeled with a pharmacy label that includes the following:
 - (1) The resident's name.
 - (2) The name of the medication.

(3) The date the prescription was issued.

(4) The prescribed dosage and instructions for administration.

(5) The name and title of the prescriber.

(b) If the OTC medications and CAM belong to the resident, they shall be identified with the resident's name.

(c) Sample prescription medications shall have written instructions from the prescriber that include the components specified in subsection (a).

§ 2800.185. Accountability of medication and controlled substances.

(a) The residence shall develop and implement procedures for the safe storage, access, security, distribution and use of medications and medical equipment by trained staff persons.

(b) At a minimum, the procedures must include:

(1) Documentation of the receipt of controlled substances and prescription medications.

(2) A process to investigate and account for missing medications and medication errors.

(3) Limited access to medication storage areas.

(4) Documentation of the administration of prescription medications, OTC medications and CAM for residents who receive medication administration services or assistance with self-administration. This requirement does not apply to a resident who self-administers medication without the assistance of a staff person and stores the medication in his living unit.

(5) To the extent indicated in the resident's support plan, the residence shall obtain prescribed medication for residents and keep an adequate supply of resident medication on hand at all times.

§ 2800.186. Prescription medications.

(a) Each prescription medication must be prescribed in writing by an authorized prescriber. Prescription orders shall be kept current.

(b) Prescription medications shall be used only by the resident for whom the prescription was prescribed.

(c) Changes in medication may only be made in writing by the prescriber, or in the case of an emergency, an alternate prescriber, except for circumstances in which oral orders may be accepted by nurses in accordance with regulations of the Department of State. The resident's medication record shall be updated as soon as the residence receives written notice of the change.

§ 2800.187. Medication records.

(a) A medication record shall be kept to include the following for each resident for whom medications are administered:

- (1) Resident's name.
- (2) Drug allergies.
- (3) Name of medication.
- (4) Strength.
- (5) Dosage form.
- (6) Dose.
- (7) Route of administration.
- (8) Frequency of administration.
- (9) Administration times.
- (10) Duration of therapy, if applicable.
- (11) Special precautions, if applicable.
- (12) Diagnosis or purpose for the medication, including pro re nata (PRN).
- (13) Date and time of medication administration
- (14) *Name and initials of the staff person administering the medication.*

(b) The information in subsection (a)(13) and (14) shall be recorded at the time the medication is administered.

(c) If a resident refuses to take a prescribed medication, the refusal shall be documented in the resident's record and on the medication record. The refusal shall be reported to the prescriber within 24 hours, unless otherwise instructed by

the prescriber. Subsequent refusals to take a prescribed medication shall be reported as required by the prescriber.

(d) The residence shall follow the directions of the prescriber.

§ 2800.188. Medication errors.

(a) Medication errors include the following:

- (1) Failure to administer a medication.
- (2) Administration of the wrong medication.
- (3) Administration of the wrong amount of medication.
- (4) Failure to administer a medication at the prescribed time.
- (5) Administration to the wrong resident.
- (6) Administration through the wrong route.

(b) A medication error shall be immediately reported to the resident, the resident's designated person and the prescriber.

(c) Documentation of medication errors and the prescriber's response shall be kept in the resident's record.

(d) There shall be a system in place to identify and document medication errors and the residence's pattern of error.

(e) There shall be documentation of the follow-up action that was taken to prevent future medication errors.

§ 2800.189. Adverse reaction.

(a) If a resident has a suspected adverse reaction to a medication, the residence shall immediately consult a physician or seek emergency medical treatment. The resident's designated person shall be notified, if applicable.

(b) The residence shall document adverse reactions, the prescriber's response and any action taken in the resident's record.

§ 2800.190. Medication administration training.

(a) A staff person who has successfully completed a Department-approved medications administration course that includes the passing of the Department's

performance-based competency test within the past 2 years may administer oral; topical; eye, nose and ear drop prescription medications and epinephrine injections for insect bites or other allergies.

(b) A staff person is permitted to administer insulin injections following successful completion of a Department-approved medications administration course that includes the passing of a written performance-based competency test within the past 2 years, as well as successful completion of a Department-approved diabetes patient education program within the past 12 months.

(c) A record of the training shall be kept including the staff person trained, the date, source, name of trainer and documentation that the course was successfully completed.

§ 2800.191. Resident education.

The residence shall educate the resident of the right to question or refuse a medication if the resident believes there may be a medication error. Documentation of this resident education shall be kept.

SAFE MANAGEMENT TECHNIQUES

§ 2800.201. Safe management techniques.

The residence shall use positive interventions to modify or eliminate a behavior that endangers the resident himself or others. Positive interventions include improving communications, reinforcing appropriate behavior, redirection, conflict resolution, violence prevention, praise, deescalation techniques and alternative techniques or methods to identify and defuse potential emergency situations.

§ 2800.202. Prohibitions.

The following procedures are prohibited:

(1) Seclusion, defined as involuntary confinement of a resident in a room or living unit from which the resident is physically prevented from leaving, is prohibited. This does not include the admission of a resident in a secured dementia care unit in accordance with § 2800.231 (relating to admission).

(2) Aversive conditioning, defined as the application of startling, painful or noxious stimuli, is prohibited.

(3) Pressure point techniques, defined as the application of pain for the purpose of achieving compliance, is prohibited.

(4) A chemical restraint, defined as use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior, is prohibited. A chemical restraint does not include a drug ordered by a physician or dentist to treat the symptoms of a specific mental, emotional or behavioral condition, or as pretreatment prior to a medical or dental examination or treatment.

(5) A mechanical restraint, defined as a device that restricts the movement or function of a resident or portion of a resident's body, is prohibited. Mechanical restraints include geriatric chairs, handcuffs, anklets, wristlets, camisoles, helmet with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets, chest restraints and other types of locked restraints. A mechanical restraint does not include a device used to provide support for the achievement of functional body position or proper balance that has been prescribed by a medical professional as long as the resident can easily remove the device or the resident or his designee understands the need for the device and consents to its use.

(6) A manual restraint, defined as a hands-on physical means that restricts, immobilizes or reduces a resident's ability to move his arms, legs, head or other body parts freely, is prohibited. A manual restraint does not include prompting, escorting or guiding a resident to assist in the ADLs or IADLs.

§ 2800.203. Bedside rails.

(a) Bedside rails may not be used unless the resident can raise and lower the rails on his own. Bedside rails may not be used to keep a resident in bed. Use of any length rail longer than half the length of the bed is considered a restraint and is prohibited. Use of more than one rail on the same side of the bed is not permitted.

(b) Half-length rails are permitted only if all of the following conditions are met:

- (1) The resident's assessment or support plan, or both, addresses the medical symptoms necessitating the use of half-length rails and the health and safety protection necessary in order to safely use half-length rails.
- (2) The residence has attempted to use less restrictive alternatives.
- (3) The resident or legal representative consented to the use of half-length rails after the risk, benefits and alternatives were explained.

SERVICES

§ 2800.220 Assisted living residence services.

(a) *Services.* The residence must provide core services as specified in subsection (b). Other individuals or agencies may furnish services directly or under arrangements with the residence in accordance with a mutually agreed upon charge or fee between the residence, resident and other individual or agency. These other services shall be supplemental to the core services provided by the residence and shall not supplant them.

(b) *Core Services.* The residence must, at a minimum, provide the following services:

(1) Nutritious meals and snacks in accordance with §§ 2800.161 and 2800.162 (relating to nutritional adequacy; meals).

(2) Laundry services in accordance with § 2800.105 (relating to laundry).

(3) A daily program of social and recreational activities in accordance with § 2800.221 (relating to activities program).

(4) Assistance with performing ADLs and IADLs as indicated in the resident's assessment and support plan in accordance with §§ 2800.23 and 2800.24 (relating to activities and personal hygiene).

(5) Assistance with self-administration of medication or medication administration as indicated in the resident's assessment and support plan in accordance with §§ 2800.181 and 2800.182 (relating to self-administration and medication administration).

(6) Household services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences.

(7) Transportation in accordance with § 2800.171 (relating to transportation).

(c) *Supplemental Services.* The residence shall provide or arrange for the provision of supplemental health care services, including but not limited to:

(1) Hospice services.

(2) Occupational therapy.

(3) Skilled nursing services.

(4) Physical therapy.

(5) Behavioral health services.

(6) Home health services.

(7) Escort service to and from medical appointments if transportation is coordinated by the residence.

(d) Cognitive support services. The residence shall provide cognitive support services to residents who require such services, whether in a special care unit or elsewhere in the residence.

§ 2800.221. Activities program.

(a) The residence shall develop a program of daily activities designed to promote each resident's active involvement with other residents, the resident's family and the community. The residence shall encourage the residents' active participation in the development of the daily activities calendar.

(b) The program must be based upon individual and group interests and provide social, physical, intellectual and recreational activities in a planned, coordinated and structured manner and shall encourage active participation in the community at large.

(c) The week's daily activity calendar shall be posted in advance in a conspicuous and public place in the residence.

§ 2800.222. Community social services.

Residents shall be encouraged and assisted in the access to and use of social services in the community which may benefit the resident, including a county mental health and mental retardation program, a drug and alcohol program, a senior citizens center, an area agency on aging or a home health care agency.

§ 2800.223. Description of services.

(a) The residence shall have a current written description of services and activities that the residence provides including the following:

(1) The scope and general description of the services and activities that the residence provides.

(2) The criteria for admission and discharge.

(3) Specific services that the residence does not provide, but will arrange or coordinate.

(b) The residence shall develop written procedures for the delivery and management of services from admission to discharge.

§ 2800.224. Preadmission screening. - - - -

(a) A determination shall be made by the administrator or designee within 30 days prior to admission and documented on the Department's preadmission screening form that the needs of the potential resident can be met by the services provided by the residence.

(b) A potential resident whose needs cannot be met by the residence shall be provided with a written decision denying their admission and provide a basis for their denial. The potential resident shall then be referred to a local appropriate assessment agency.

(c) The preadmission screening shall be completed by the administrator or designee. If the potential resident is referred by a State-operated facility, a county mental health and mental retardation program, a drug and alcohol program or an area agency on aging, a representative of the referral agent may complete the preadmission screening.

(d) A potential resident who requires assisted living services but does not currently require assistance in obtaining supplemental health care services may be admitted to the residence, provided the resident is only provided assisted living services required or requested by the resident. Where services are required, the residence shall develop a support plan as required in § 2800.227 (relating to development of the support plan). This subsection applies to residents under any of the following circumstances:

(1) A resident who may require supplemental health care services in the future.

(2) A resident who wishes to obtain assistance in obtaining such services.

(3) A resident who resides in a facility in which such services are available.

(e) An initial screening shall not be required to commence supplemental health care services to a resident of a residence under any of the following circumstances:

(1) If the resident was not receiving such services at the time of the resident's admission.

(2) To transfer a resident from a portion of a residence that does not provide supplemental health care services to a portion of the residence that provides such service.

(3) To transfer a resident from a personal care home to a residence licensed by the same operator.

(f) Each residence must demonstrate the ability to provide or arrange for the provision of supplemental health care services in a manner duly protective of the health, safety and well-being of its residents utilizing employees, independent contractors or contractual arrangements with other health care facilities or practitioners licensed, registered or certified to the extent required by law to provide such service.

(g) Persons requiring the services of a licensed long-term care nursing facility, may reside in a residence, provided that appropriate supplemental health care services are provided and the design, construction, staffing and operation of the residence allows for safe emergency evacuation.

§ 2800.225. Initial and annual assessment.

(a) A resident shall have a written initial assessment that is documented on the Department's assessment form within 15 days of admission. The administrator or designee, or licensed practical nurse, under the supervision of a registered nurse, may complete the initial assessment.

(b) A residence may use its own assessment form if it includes the same information as the Department's assessment form.

(c) The resident shall have additional assessments as follows:

(1) Annually.

(2) If the condition of the resident significantly changes prior to the annual assessment.

(3) At the request of the Department upon cause to believe that an update is required.

§ 2800.226. Mobility criteria.

(a) The resident shall be assessed for mobility needs as part of the resident's assessment.

(b) If a resident is determined to have mobility needs as part of the resident's initial or annual assessment, specific requirements relating to the care, health and safety of the resident shall be met immediately.

(c) The administrator shall notify the Department within 30 days after a resident with mobility needs is admitted to the residence or the date when a resident develops mobility needs.

§ 2800.227. Development of the support plan.

(a) Each resident requiring services shall have a written support plan developed and implemented within 30 days of admission to the residence. The support plan shall be documented on the Department's support plan form.

(b) A residence may use its own support plan form if it includes the same information as the Department's support plan form. A licensed practical nurse, under the supervision of a registered nurse, must review and approve the support plan.

(c) The support plan shall be revised within 30 days upon completion of the annual assessment or upon changes in the resident's needs as indicated on the current assessment. The residence shall review each resident's support plan on a quarterly basis and modify as necessary to meet the resident's needs.

(d) Each residence shall document in the resident's support plan the dietary, medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services if the resident's physician, physician's assistant or certified registered nurse practitioner, determine the necessity of these services. This requirement does not require a residence to pay for the cost of these medical and behavioral care services.

(e) The resident's support plan must document the ability of the resident to self-administer medications or the need for medication reminders or medication administration.

(f) A resident shall be encouraged to participate in the development and implementation of the support plan. A resident may include a designated person or family member in making decisions about services.

(g) Individuals who participate in the development of the support plan shall sign and date the support plan.

(h) If a resident or designated person is unable or chooses not to sign the support plan, a notation of inability or refusal to sign shall be documented

(i) The support plan shall be accessible by direct care staff persons at all times.

(j) A resident or his designated person has a right to request the review and modification of his support plan.

(k) The residence shall give a copy of the support plan to the resident and the resident's designated person.

§ 2800.228. Transfer and discharge.

(a) The facility shall ensure that a transfer or discharge is safe and orderly and that the transfer or discharge is appropriate to meet the resident's needs. This shall include ensuring that a resident is transferred or discharged with all their medications, durable medical equipment, and personal property. The residence shall permit the resident to participate in the decision relating to their relocation.

(b) If the residence initiates a transfer or discharge of a resident, or if the legal entity chooses to close the residence, the residence shall provide a 30-day advance written notice to the resident, the resident's family or designated person and the referral agent citing the reasons for the transfer or discharge. This shall be stipulated in the resident-residence contract.

(1) The 30-day advance written notice shall be written in language in which the resident understands, or performed in American Sign Language or presented orally in a language the resident understands if the resident does not speak standard English. The notice shall include the following:

(i) The specific reason for the transfer or discharge.

(ii) The effective date of the transfer or discharge.

(iii) The location to which the resident will be transferred or discharged.

(iv) An explanation of the measures the resident or the resident's designated person can take if they disagree with the residence decision to transfer or discharge which shall include the name, mailing address, and telephone number of the State and local long-term care ombudsman.

(2) Prior to initiating a transfer or discharge of a resident, the residence shall make reasonable accommodation for aging in place that may include services from outside providers. The residence must demonstrate through support plan modification and documentation the attempts to resolve the reason for the transfer or discharge. The residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services. Supplemental services may be provided by the resident's family, residence staff or private duty staff as agreed to by the resident and the residence. This shall be stipulated in the resident-residence contract.

(3) Practicable notice, rather than a 30-day advance written notice is required if a delay in transfer or discharge would jeopardize the health, safety or well-being of the resident or others in the residence, as certified by a physician or the Department. This may occur when the resident needs psychiatric services or is abused in the residence, or the Department initiates closure of the residence.

(c) A residence shall give the Department written notice of its intent to close the residence, at least 60 days prior to the anticipated date of closing.

(d) A residence may not require a resident to leave the residence prior to 30 days following the resident's receipt of a written notice from the residence regarding the intended closure of the residence, except when the Department determines that removal of the resident at an earlier time is necessary for the protection of the health, safety and well-being of the resident.

(e) The date and reason for the transfer or discharge, and the destination of the resident, if known, shall be recorded in the resident record and tracked in a transfer and discharge tracking chart that the residence shall maintain and make available to the Department.

(f) If the legal entity chooses to voluntarily close the residence or if the Department has initiated legal action to close the residence, the Department working in conjunction with appropriate local authorities, will offer relocation assistance to the residents. Except in the case of an emergency, each resident may participate in planning the transfer, and shall have the right to choose among the available alternatives after an opportunity to visit the alternative residences. These procedures shall apply even if the resident is placed in a temporary living situation.

(g) Within 30 days of the residence's closure, the legal entity shall return the license to the Department.

(h) The only grounds for transfer or discharge of a resident from a residence are for the following conditions:

(1) If a resident is a danger to himself or others and the behavior cannot be managed through interventions, services planning or informed consent agreements.

(2) If the legal entity chooses to voluntarily close the residence, or a portion of the residence.

(3) If a residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence under § 2800.229 (relating to excludable conditions; exceptions) or within the scope of licensure for a residence. In that case, the residence shall notify the resident, the resident's designated person and the local ombudsman. The residence shall provide justification for the residence's determination that the needs of the resident cannot be met. If a resident or the resident's designated person disagrees with the residence's decision to transfer or discharge, the residence shall contact the local ombudsman. If the residence decides to proceed with the transfer or discharge then the ombudsman shall notify the Department. The Department may take any appropriate licensure action it deems necessary based upon the report of the ombudsman. In the event that there is no disagreement related to the transfer or discharge, a plan for other placement shall be made as

as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the Department.

(4) If meeting the resident's needs would require a fundamental alteration in the residence's program or building site, or would create an undue financial or programmatic burden on the residence.

(5) If the resident has failed to pay after reasonable documented efforts by the residence to obtain payment.

(6) If closure of the residence is initiated by the Department.

(7) Documented, repeated violation of the residence rules.

(8) A court has ordered the transfer or discharge.

§ 2800.229. Excludable conditions; exceptions.

(a) Except as provided in subsection (b), a residence may not admit, retain or serve an individual with any of the following conditions or health care needs:

(1) Ventilator dependency.

(2) Stage III and IV decubiti and vascular ulcers that are not in a healing stage.

(3) Continuous intravenous fluids.

(4) Reportable infectious diseases, such as tuberculosis, in a communicable state that requires isolation of the individual or requires special precautions by a caretaker to prevent transmission of the disease unless the Department of Health directs that isolation be established within the residence.

(5) Nasogastric tubes.

(6) Physical restraints.

(7) Continuous skilled nursing care twenty-four hours a day.

(b) The residence may submit a written request to the Department on a form provided by the Department for an exception related to any of the conditions or health care needs listed in subsection (a) or (e) in order to allow the residence to admit, retain or serve an individual with one of those conditions or health care needs, unless a determination is unnecessary as set forth in subsection (e).

(c) Submission, review and determination of an exception request.

(1) The administrator of the residence shall submit the exception request. The exception request shall be signed and affirmed by an individual listed in subsection (d) and accompanied by a support plan which includes the residence accommodations for treating the excludable condition requiring the exception request. All proposed accommodations must conform with the provisions contained within the resident-residence contract.

(2) The Department will review the exception request in consultation with a certified registered nurse practitioner or a physician, with experience caring for the elderly and disabled in long-term living settings.

(3) The Department will respond to the exception request in writing within 5 business days of receipt.

(4) The Department may approve the exception request if the following conditions are met:

(i) The exception request is desired by the resident or applicant.

(ii) The resident or applicant will benefit from the approval of the exception request.

(iii) The residence demonstrates to the Department's satisfaction that the residence has the staff, skills and expertise necessary to care for the resident's needs related to the excludable condition.

(iv) The residence demonstrates to the Department's satisfaction that any necessary supplemental health care provider has the staff, skills and expertise necessary to care for the resident's needs related to the excludable condition.

(v) The residence provides a written alternate care plan that ensures the availability of staff with the skills and expertise necessary to care for the resident's needs related to the excludable condition in the event the supplemental health care provider is unavailable.

(5) The Department will render decisions on exception requests on a case-by-case basis and not provide for facility-wide exceptions.

(d) The following persons may certify that an individual may not be admitted or retained in a residence:

(1) The administrator acting in consultation with supplemental health care providers.

(2) The individual's physician or certified registered nurse practitioner.

(3) The medical director of the residence.

(e) A residence may admit, retain or serve an individual for whom a determination is made by the Department, upon the written request of the residence, that the individual's specific health care needs can be met by a provider of assisted living services or within a residence, including an individual requiring:

(1) Gastric tubes, except that a determination shall not be required if the individual is capable of self-care of the gastric tube or a licensed health care professional or other qualified individual cares for the gastric tube.

(2) Tracheostomy, except that a determination shall not be required if the individual is independently capable of self-care of the tracheostomy.

(3) Skilled nursing care twenty-four hours a day, except that a determination shall not be required if the skilled nursing care is provided on a temporary or intermittent basis.

(4) A sliding scale insulin administration, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the insulin;

(5) Intermittent intravenous therapy, except that a determination shall not be required if a licensed health care professional manages the therapy.

(6) Insertions, sterile irrigation and replacement of a catheter, except that a determination shall not be required for routine maintenance of a urinary catheter, if the individual is capable of self-administration or a licensed health care professional administers the catheter.

(7) Oxygen, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the oxygen.

(8) Inhalation therapy, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the therapy.

(9) Other types of supplemental health care services that the administrator, acting in consultation with supplemental health care providers, determines can be provided in a safe and effective manner by the residence.

(f) Nothing herein shall prevent an individual seeking admission to a residence or a resident from requesting that the residence apply for an exception from the Department for a condition listed in this section for which an exception must be granted by the Department. The residence's determination on whether or not to seek such an exception shall be documented on a form supplied by the Department.

(g) A written record of the exception request, the supporting documentation to justify the exception request and the determination related to the exception request shall be kept in the records of the residence. The information required by this subsection shall also be kept in the resident's record.

(h) The residence shall record the following decisions made on the basis of this section.

(1) All admission denials.

(2) Transfer or discharge decisions that are made on the basis of this section.

SPECIAL CARE UNITS

§ 2800.231. Admission.

(a) This section and §§ 2800.232 - 2800.239 apply to special care units. These provisions are in addition to the other provisions of this chapter. A special care unit is a residence or portion of a residence that provides specialized care and services for residents with Alzheimer's disease or other dementia in the least restrictive manner consistent with the resident's support plan to ensure the safety of the resident and others in the residence while maintaining the resident's ability to age in place. Admission of a resident to a special care unit shall be in consultation with the resident's family or designated person. Prior to admission into a special care unit, other service options that may be available to a resident shall be considered.

(b) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department, within 60 days prior to admission. Documentation shall include the resident's diagnosis of Alzheimer's disease or other dementia and the need for the resident to be served in a special care unit.

(c) A written cognitive preadmission screening completed in collaboration with a physician or a geriatric assessment team and documented on the Department's preadmission screening form shall be completed for each resident within 72 hours prior to admission to a special care unit.

(d) A geriatric assessment team is a group of multidisciplinary specialists in the care of adults who are older that conducts a multidimensional evaluation of a resident and assists in developing a support plan by working with the resident's physician, designated person and family to coordinate the resident's care.

(e) Each resident record must have documentation that the resident and the resident's designated person have agreed to the resident's admission or transfer to the special care unit.

(f) In addition to the requirements in § 2800.225 (relating to initial and annual assessment), the resident shall also be assessed quarterly for the continuing need for the special care unit.

(g) An individual who does not have a primary diagnosis of Alzheimer's disease or other dementia may reside in the special care unit if desired by the resident or his designated person.

(1) The individual shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department within 60 days prior to residence or 15 days after residence.

(2) The individual shall have access to and be able to follow directions for the operation of the key pads or other lock-releasing devices to exit the special care unit.

(h) The resident-residence contract specified in § 2800.25 (relating to resident-residence contract) must also include a disclosure of services, admission and discharge criteria, change in condition policies, special programming and costs and fees.

(i) For individuals with Alzheimer's disease or dementia, or where the residence holds itself out to the public as providing services or housing for individuals with cognitive impairments, the residence shall disclose to individuals and provide materials that include the following:

(1) The residence's written statement of its philosophy and mission which reflects the needs of individuals with cognitive impairments.

(2) A description of the residence's physical environment and design features to support the functioning of individuals with cognitive impairments.

(3) A description of the frequency and types of individual and group activities designed specifically to meet the needs of individuals with cognitive impairments.

(4) A description of the security measures provided by the residence.

(5) A description of the training provided to staff regarding provision of care to individuals with cognitive impairments.

(6) A description of availability of family support programs and family involvement.

(7) The process used for assessment and establishment of a plan of services for the individual, including methods by which the plan of services will remain responsive to changes in the individual's condition.

(j) The residence shall identify measures to address individuals with cognitive impairments who have tendencies to wander.

§ 2800.232. Environmental protection.

(a) The residence shall provide exercise space, both indoor and outdoor.

(b) No more than two residents may occupy a living unit regardless of its size. A living unit shall meet the requirement in § 2800.101 (relating to resident living units), as applicable.

(c) The residence shall provide space for dining, group and individual activities and visits.

(d) The residence shall provide a full description of the measures taken to enhance environmental awareness and maximize independence of the residents. The measures to enhance environmental awareness and maximize independence of the residents shall be implemented.

§ 2800.233. Doors, locks and alarms.

(a) Doors equipped with key-locking devices, electronic card operated systems or other devices that prevent immediate egress are permitted only if there is written approval from the Department of Labor and Industry, Department of Health or appropriate local building authority permitting the use of the specific locking system.

(b) A residence shall have a statement from the manufacturer, specific to that residence, verifying that the electronic or magnetic locking system will shut down, and that all doors will open easily and immediately when one or more of the following occurs:

(1) Upon a signal from an activated fire alarm system, heat or smoke detector.

(2) Power failure to the residence.

(3) Overriding the electronic or magnetic locking system by use of a key pad or other lock-releasing device.

(c) If key-locking devices, electronic card systems or other devices that prevent immediate egress are used to lock and unlock exits, directions for their operation shall be conspicuously posted near the device.

(d) Doors that open onto areas such as parking lots, or other potentially unsafe areas, shall be locked by an electronic or magnetic system.

(e) Fire alarm systems shall be interconnected to the local fire department, when available, or a 24-hour monitoring service approved by the local fire department.

§ 2800.234. Resident care.

(a) Within 72 hours of the admission, or within 72 hours prior to the resident's admission to the special care unit, a support plan shall be developed, implemented and documented in the resident record.

(b) The support plan must identify the resident's physical, medical, social, cognitive and safety needs.

(c) The support plan must identify the individual responsible to address the resident's needs.

(d) The support plan shall be reviewed, and if necessary, revised at least quarterly and as the resident's condition changes.

(e) The resident or the resident's designated person shall be involved in the development and the revisions of the support plan.

§ 2800.235. Discharge.

If the residence initiates a discharge or transfer of a resident, or the legal entity chooses to close the residence, the administrator shall give a 30-day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the discharge or transfer. This requirement shall be stipulated in the resident-residence contract signed prior to admission to the special care unit.

§ 2800.236. Training.

(a) Each direct care staff person working in a special care unit shall have 8 hours of initial training within the first 30 days of the date of hire and a minimum of 8 hours of annual training related to dementia care and services, in addition to

the 12 hours of annual training specified in § 2800.65 (relating to direct care staff person training and orientation).

(b) The training at a minimum shall include the following topics:

- (1) An overview of Alzheimer's disease and related dementias.
- (2) Managing challenging behaviors.
- (3) Effective communications.
- (4) Assistance with ADLs.
- (5) Creating a safe environment.

§ 2800.237. Program.

(a) The following types of activities shall be offered at least weekly:

- (1) Gross motor activities, such as dancing, stretching and other exercise.
- (2) Self-care activities, such as personal hygiene.
- (3) Social activities, such as games, music and holiday and seasonal celebrations.
- (4) Crafts, such as sewing, decorations and pictures.
- (5) Sensory and memory enhancement activities, such as review of current events, movies, story telling, picture albums, cooking, pet therapy and reminiscing.
- (6) Outdoor activities, as weather permits, such as walking, gardening and field trips.

(b) Resident participation in general activity programming shall:

- (1) Be voluntary.
- (2) Respect the resident's age and cognitive abilities.
- (3) Support the retention of the resident's abilities.

§ 2800.238. Staffing.

Each resident in a special care unit shall be considered to be a resident with mobility needs under § 2800.57(c) (relating to direct care staffing).

§ 2800.239. Application to Department.

(a) The legal entity shall submit a written request to the Department at least 60 days prior to the following:

- (1) Opening a special care unit.
- (2) Adding a special care unit to an existing residence.
- (3) Increasing the maximum capacity in an existing unit.
- (4) Changing the locking system, exit doors or floor plan of an existing unit.

(b) The Department will inspect and approve the special care unit prior to operation or change. The requirements of this chapter shall be met prior to operation.

(c) The following documents shall be included in the written request specified in subsection (a):

- (1) *The name, address and legal entity of the residence.*
- (2) The name of the administrator of the residence.
- (3) The maximum capacity of the residence.
- (4) The requested resident population of the special care unit.
- (5) A building description.
- (6) A unit description.
- (7) *The type of locking system.*
- (8) Policy and procedures to be implemented for emergency egress and resident elopement.
- (9) A sample of a 2-week staffing schedule.
- (10) Verification of completion of additional training requirements.
- (11) The operational description of the special care unit locking system of the doors.

- (12) The manufacturer's statement regarding the special care unit locking system.
- (13) A written approval or a variance permitting locked exit doors from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.
- (14) The name of the municipality or 24-hour monitoring service maintaining the interconnection with the residence's fire alarm system.
- (15) A sample plan of care and service for the resident addressing the resident's physical, medical, social, cognitive and safety needs for the residents.
- (16) The activity standards.
- (17) The complete medical and cognitive preadmission assessment, that is completed upon admission and reviewed and updated annually.
- (18) A consent form agreeing to the resident's placement in the special care unit, to be signed by the resident or the resident's designated person.
- (19) A written agreement containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming, costs and fees.
- (20) A description of environmental cues being utilized.
- (21) A general floor plan of the entire residence.
- (22) A specific floor plan of the special care unit, outside enclosed area and exercise space.

RESIDENT RECORDS

§ 2800.251. Resident records.

- (a) A separate record shall be kept for each resident.
- (b) The entries in a resident's record must be permanent, legible, dated and signed by the staff person making the entry.

- - (c) The residence shall use standardized forms to record information in the resident's record.
- (d) Separate resident records shall be kept on the premises where the resident lives.
- (e) Resident records shall be made available to the resident and the resident's designated person during normal working hours. Resident records shall be made available upon request to the resident and the family members.

§ 2800.252. Content of resident records.

Each resident's record must include the following information:

- (1) Name, gender, admission date, birth date and Social Security number.
- (2) Race, height, weight, color of hair, color of eyes, religious affiliation, if any, and identifying marks.
- (3) A photograph of the resident that is no more than 2 years old.
- (4) Language or means of communication spoken or used by the resident.
- (5) The name, address, telephone number and relationship of a designated person to be contacted in case of an emergency.
- (6) The name, address and telephone number of the resident's physician or source of health care.
- (7) The current and previous 2 years' physician's examination reports, including copies of the medical evaluation forms.
- (8) A list of prescribed medications, OTC medications and CAM.
- (9) Dietary restrictions.
- (10) A record of incident reports for the individual resident.
- (11) A list of allergies.
- (12) The documentation of health care services and orders, including orders for the services of visiting nurse or home health agencies.
- (13) The preadmission screening, initial intake assessment and the most current version of the annual assessment.

- (14) A support plan.
- (15) Applicable court order, if any.
- (16) The resident's medical insurance information.
- (17) The date of entrance into the residence, relocations and discharges, including the transfer of the resident to other residences owned by the same legal entity.
- (18) An inventory of the resident's personal property as voluntarily declared by the resident upon admission and voluntarily updated.
- (19) An inventory of the resident's property entrusted to the administrator for safekeeping.
- (20) The financial records of residents receiving assistance with financial management.
- (21) The reason for termination of services or transfer of the resident, the date of transfer and the destination.
- (22) Copies of transfer and discharge summaries from hospitals, if available.
- (23) If the resident dies in the residence, a copy of the official death certificate.
- (24) Signed notification of rights, grievance procedures and applicable consent to treatment protections specified in § 2800.41 (relating to notification of rights and complaint procedures).
- (25) A copy of the resident-residence contract.
- (26) A termination notice, if any.
- (27) A record relating to any exception request under § 2800.229 (relating to excludable conditions; exceptions).
- (28) Ongoing resident progress notes.

§ 2800.253. Record retention and disposal.

- (a) The resident's entire record shall be maintained for a minimum of 3 years following the resident's discharge from the residence or until any audit or litigation is resolved.

- (b) Records shall be destroyed in a manner that protects confidentiality.
- (c) The residence shall keep a log of resident records destroyed on or after _____ [Ed. Note: Insert effective date of the final regulation]. This log must include the resident's name, record number, birth date, admission date and discharge date.
- (d) Records required under this chapter that are not part of the resident records shall be kept for a minimum of 3 years or until any audit or litigation is resolved.

§ 2800.254. Record access and security.

- (a) Records of active and discharged residents shall be maintained in a confidential manner, which prevents unauthorized access.
- (b) Each residence shall develop and implement policy and procedures addressing record accessibility, security, storage, authorized use and release and who is responsible for the records.
- (c) Resident records shall be stored in locked containers or a secured, enclosed area used solely for record storage and be accessible at all times to the administrator, the administrator's designee, or the nurse involved in assessment and support plan development and upon request, to the Department or representatives of the area agency on aging.

ENFORCEMENT

§ 2800.261. Classification of violations.

- (a) The Department will classify each violation of this chapter into one of three categories as described in paragraphs (1)-(3). A violation identified may be classified as Class I, Class II or Class III, depending upon the severity, duration and the adverse effect on the health and safety of residents.
- (1) *Class I.* Class I violations have a substantial probability of resulting in death or serious mental or physical harm to a resident.
- (2) *Class II.* Class II violations have a substantial adverse effect upon the health, safety or well-being of a resident.
- (3) *Class III.* Class III violations are minor violations, which have an adverse effect upon the health, safety or well-being of a resident.
- (b) The Department's guidelines for determining the classification of violations are available from the Department.

§ 2800.262. Penalties and corrective action.

- (a) The Department will assess a penalty for each violation of this chapter.
- (b) Penalties will be assessed on a daily basis from the date on which the citation was issued until the date the violation is corrected, except in the case of Class II and Class III violations.
- (c) In the case of a Class II violation, assessment of the penalty will be suspended for 5 days from the date of citation to permit sufficient time for the residence to correct the violation. If the residence fails to provide proof of correction of the violation to the Department within the 5-day period, the fine will be retroactive to the date of citation. The Department may extend the time period for good cause.
- (d) The Department will assess a penalty of \$20 per resident per day for each Class I violation. Each Class I violation shall be corrected within 24 hours.
- (e) The Department will assess a minimum penalty of \$5 per resident per day, up to a maximum penalty of \$15 per resident per day, for each Class II violation.
- (f) There is no monetary penalty for Class III violations unless the residence fails to correct the violation within 15 days. Failure to correct a Class III violation within the 15-day period may result in a penalty assessment of up to \$3 per resident per day for each Class III violation retroactive to the date of the citation.
- (g) If a residence is found to be operating without a license, a penalty of \$500 will be assessed. After 14 days, if the residence operator cited for operating without a license fails to file an application for a license, the Department will assess an additional \$20 for each resident for each day during which the residence operator fails to apply.
- (h) A residence charged with a violation of this chapter or Chapter 20 (relating to licensure or approval of facilities and agencies) has 30 days to pay the assessed penalty in full.

§ 2800.263. Appeals of penalty.

- (a) If the residence that is fined intends to appeal the amount of the penalty or the fact of the violation, the residence shall forward the assessed penalty, not to exceed \$500, to the Secretary for placement in an escrow account with the State Treasurer. A letter appealing the penalty shall be submitted with the assessed penalty. This process constitutes an appeal.

(b) If, through an administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Secretary will, within 30 days, remit the appropriate amount to the legal entity together with interest accumulated on these funds in the escrow deposit.

(c) Failure to forward payment of the assessed penalty to the Secretary within 30 days will result in a waiver of the right to contest the fact of the violation or the amount of the penalty.

(d) After an administrative hearing decision that is adverse to the legal entity, or a waiver of the administrative hearing, the assessed penalty amount will be made payable to the "Commonwealth of Pennsylvania." It will be collectible in a manner provided by law for the collection of debts.

(e) If a residence liable to pay the penalty neglects or refuses to pay the penalty upon demand, the failure to pay will constitute a judgment in favor of the Commonwealth in the amount of the penalty, together with the interest and costs that may accrue on these funds.

§ 2800.264. Use of fines.

(a) Money collected by the Department under this section will be placed in a special restricted receipt account.

(b) Money collected will be used first to defray the expenses incurred by residents relocated under this chapter.

(c) The Department will use money remaining in this account to assist with paying for enforcement of this chapter. Fines collected will not be subject to 42 Pa.C.S. § 3733 (relating to deposits into account).

§ 2800.265. Review of classifications.

Semiannually, the Department will review the standard guidelines for the classification of violations and evaluate the use of these guidelines. This review is to ensure the uniformity and consistency of the classification process.

§ 2800.266. Revocation or nonrenewal of licenses.

(a) The Department will temporarily revoke the license of a residence if, without good cause, one or more Class I violations remain uncorrected 24 hours after the residence has been cited for the violation.

(b) The Department will temporarily revoke the license of a residence if, without good cause, one or more Class II violations remain uncorrected 15 days after the citation.

(c) Upon the revocation of a license in the instances described in subsections (a) and (b), or if the residence continues to operate without applying for a license as described in § 2800.262(h) (relating to penalties), residents shall be relocated.

(d) The revocation of a license may terminate upon the Department's determination that its violation is corrected.

(e) If, after 3 months, the Department does not issue a new license for a residence, the prior license is revoked under section 1087 of the Public Welfare Code (62 P. S. § 1087).

(1) Revocation or nonrenewal under this section will be for a minimum of 5 years.

(2) A residence, which has had a license revoked or not renewed under this section, will not be allowed to operate, staff or hold an interest in a residence which applies for a license for 5 years after the revocation or nonrenewal.

(f) If a residence has been found to have Class I violations on two or more separate occasions during a 2-year period without justification, the Department will revoke or refuse to renew the license of the residence.

(g) The power of the Department to revoke or refuse to renew or issue a license under this section is in addition to the powers and duties of the Department under section 1026 of the Public Welfare Code (62 P. S. § 1026).

§ 2800.267. Relocation of residents.

(a) If the relocation of residents is due to the failure of the residence to apply for a license, the Department will offer relocation assistance to the residents. This assistance will include each resident's involvement in planning the relocation, except in the case of an emergency. Each resident shall have the right to choose among the available alternatives after an opportunity to visit the alternative residences. These procedures will occur even if the residents are placed in a temporary living situation.

(b) A resident will not be relocated if the Secretary determines in writing that the relocation is not in the best interest of the resident.

§ 2800.268. Notice of violations.

(a) The administrator shall give each resident and the resident's designated person written notification of a Class I violation within 24 hours of the citation.

(b) The administrator shall give each resident and the resident's designated person oral or written notification of a Class I or Class II violation, as defined in § 2800.261 (relating to classification of violations), which remains uncorrected for 5 days after the date of citation.

(c) If a Class II violation remains uncorrected within 5 days following the citation, the administrator shall give written notice of the violation to each resident and the resident's designated person on the 6th day from the date of the citation.

(d) The Department will provide immediate written notification to the appropriate long-term care ombudsman of Class I violations, and notification of Class II violations which remain uncorrected 5 days after the date of citation.

§ 2800.269. Ban on admissions.

(a) The Department will ban new admissions to a residence:

- (1) That has been found to have a Class I violation.
- (2) That has been found to have a Class II violation that remains uncorrected without good cause 5 days after being cited for the violation.
- (3) Whose license has been revoked or nonrenewed.

(b) The Department may ban new admissions to a residence that has been found to have a repeated Class II violation within the past 2 years.

(c) A ban on admissions will remain in effect until the Department determines that the residence has corrected the violation, and after the correction has been made, has maintained regulatory compliance for a period of time sufficient to permit a conclusion that the compliance will be maintained for a prolonged period.

§ 2800.270. Correction of violations.

The correction of a violation cited under section 1086 of the Public Welfare Code (62 P. S. § 1086) does not preclude the Department from issuing a provisional license based upon the same violation.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 14-514
 SUBJECT: ASSISTED LIVING RESIDENCES
 AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/28/08	<i>Nancy Stewart</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
X 7/28/08	<i>Paul Puel</i>	MAJORITY CHAIRMAN <u>Frank L. Oliver</u>
X 7/28/08	<i>S. Calkin</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
X	<i>J. Hines 7/28/08</i>	MAJORITY CHAIRMAN <u>Edwin B. Erickson</u>
7/28/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
7/28/08	<i>Mayra Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)